

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 25

UNITED STATES OF AMERICA, PETITIONER

vs.

EDWARD B. CALDERON

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

WRIT OF HABEAS CORPUS FILED FEBRUARY 4, 1954

WRIT GRANTED JUNE 7, 1954

No. 13675

**United States
Court of Appeals
for the Ninth Circuit**

EDWARD B. CALDERON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Arizona

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Appeal:

Certificate of Clerk to Transcript of Record on	19
Designation of Record and Points on.....	213
Notice of	17
Stipulation for Presentation of Original Exhibits on	212
Arraignment and Plea (Minute Entry Jan. 28, 1952)	6
Certificate of Clerk to Transcript of Record..	19
Designation of Record and Points on Which Appellant Intends to Rely	213
Indictment	3
Judgment and Sentence	16
Minutes Entries:	
Jan. 28, 1952—Arraignment and Plea.....	6
Aug. 15, 1952—Order Setting Date for Trial	7
Oct. 21, 1952—Trial	8
Oct. 22, 1952—Further Trial and Verdict ...	11
Nov. 10, 1952—Judgment and Sentence.....	14

ii.

Names and Addresses of Attorneys.....	1
Notice of Appeal	17
Statement of Points on Which Appellant In- tends to Rely, Designation of Record and...	213
Stipulation for Presentation of Original Ex- hibits on Appeal	212
Transcript of Testimony and Proceedings.....	21
Instructions to the Jury	198
Witnesses	
Acosta, Louis	
—direct	150
—cross	152
Beumler, Henry	
—direct	147
—cross	148
Bowden, Percy	
—direct	149
Calderon, Edward B.	
—direct	152
—cross	180
—redirect	195
—recross	197
Clounts, Hubert B.	
—direct	34

iii.

Transcript of Proceedings—(Continued)

Witnesses—(Continued)

Fleetham, George

—direct 146

Hampel, Eugene C.

—direct 40

—cross 45

Page, Curtis

—direct 145

Sharp, Frank, Jr.

—direct 143

Tucker, Lloyd M.

—direct 50

—cross 74

Verdugo, Eugene C.

—direct 127

—cross 133

Webb, Rex E.

—direct 31

—recalled, direct 96

—cross 110

Verdict (Minute Entry Oct. 22, 1952)..... 13

	Page
Proceedings in the U. S. C. A. for the Ninth Circuit.....	217
Order of submission.....	217
Order directing filing of opinion and filing and recording of judgment.....	217
Opinion, Denman, J.....	218
Judgment.....	220
Order denying petition for rehearing.....	220
Clerk's certificate.....	221
Order extending time to file petition for writ of certiorari.....	222
Order granting certiorari.....	223

In the United States District Court for the
District of Arizona

No. C-13083—Tucson

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD B. CALDERON,

Defendant.

INDICTMENT

Viol: 26 USC 145(b)(c) (Income Tax evasion)

The Grand Jury Charges:

On or about the 10th day of July, 1947, in the District of Arizona, Edward B. Calderon, of Douglas, Arizona, who, during the calendar year 1946 was married, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Arizona, at Phoenix, Arizona, a false and fraudulent joint income tax-return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of \$3,836.68 and that the amount due and owing thereon was the sum of 0 dollars, whereas he then and there well knew their joint net income for the said calendar year was the sum of \$24,855.49, upon which said income there was owing to the

United States of America an income tax of \$7,-352.12.

In violation of Section 145(b), Internal Revenue Code; 26 U.S.C. Section 145(b).

Count Two

The Grand Jury Further Charges:

On or about the 15th day of March, 1948, in the District of Arizona, Edward B. Calderon, of Douglas, Arizona, who, during the calendar year 1947 was married, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Arizona, at Phoenix, Arizona, a false and fraudulent joint income tax-return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of \$3,663.93 and that the amount due and owing thereon was the sum of 0 dollars, whereas he then and there well know their joint net income for the said calendar year was the sum of \$11,056.82, upon which said income there was owing to the United States of America an income tax of \$1,450.70.

In violation of Section 145(b), Internal Revenue Code; 26 U.S.C. Section 145(b).

Count Three

The Grand Jury Further Charges:

On or about the 12th day of March, 1949, in the

District of Arizona, Edward B. Calderon, of Douglas, Arizona, who, during the calendar year 1948 was married, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1948, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Arizona, at Phoenix, Arizona, a false and fraudulent joint income tax-return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of \$3,590.73 and that the amount due and owing thereon was the sum of 0 dollars, whereas he then and there well knew their joint net income for the said calendar year was the sum \$6,874.43, upon which said income there was owing to the United States of America an income tax of \$230.24.

In violation of Section 145(b), Internal Revenue Code; 26 U.S.C. Section 145(b).

Count Four

The Grand Jury Further Charges:

On or about the 15th day of March, 1950, in the District of Arizona, Edward B. Calderon, of Douglas, Arizona, who, during the calendar year 1949 was married, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1949, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collec-

tion District of Arizona, at Phoenix, Arizona, a false and fraudulent joint income tax-return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of \$5,683.80 and that the amount due and owing thereon was the sum of 0 dollars, whereas he then and there well knew their joint net income for the said calendar year was the sum of \$20,206.73, upon which said income there was owing to the United States of America an income tax of \$2,830.56.

In violation of Section 145(b), Internal Revenue Code; 26 U.S.C. Section 145(b).

A True Bill.

/s/ HENRY D. WAITASSE,
Foreman

F. E. FLYNN,
United States Attorney,

/s/ K. BERRY PETERSON,
Assistant U. S. Attorney

[Endorsed]: Filed Oct. 29, 1951.

In the District Court of the United States
for the District of Arizona

MINUTE ORDER

November 1951 term, at Tucson.

Minute entry of Monday, January 28, 1952 (Tucson Division).

Honorable Claude McColloch, U. S. District Judge, specially assigned, presiding.

[Title of Cause.]

The defendant is present in person with his counsel, Norman Herring, Esquire, and is advised of the nature of the charge pending against him. The defendant is now duly arraigned; a copy of the indictment is given to the defendant, the reading thereof is waived, and he is called upon to plead. The defendant's plea is not guilty, which plea is now duly entered, and

It is ordered that this case be and it is set for trial on March 19, 1952, at ten o'clock a.m., and that the defendant continue on his own recognizance.

In the District Court of the United States
for the District of Arizona

MINUTE ORDER

May 1952 term, at Tucson.

Minute entry of Friday, August 15, 1952 (Tucson Division).

Honorable James A. Walsh, United States District Judge, presiding.

[Title of Cause.]

This case comes on regularly for trial setting this day. The defendant is present in person with his counsel, Shelley Richey, Esquire, and

It is ordered that this case be and it is set for trial on October 21, 1952, at ten o'clock a.m.

In the District Court of the United States
for the District of Arizona

MINUTE ORDER

May 1952 term, at Tucson.

Minute entry of Tuesday, October 21, 1952 (Tucson Division).

Honorable James A. Walsh, United States District Judge, presiding.

[Title of Cause.]

This case comes on regularly for trial this day. Frank E. Flynn, Esquire, United States Attorney, appears for the government. The defendant, Edward B. Calderon, is present in person with his counsel, Norman Herring, Esquire, and W. Shelley Richey, Esquire. Both sides announce ready for trial. A lawful jury of twelve persons is now duly empaneled and sworn to try this case.

Stipulation is now read by said United States Attorney into the record as follows: It is hereby stipulated that with reference to the assets and liabilities of the defendant as of December 31st of each of the years 1945 to 1949, inclusive, with the exception of the items of assets designated as "cash on hand" and "cash in bank" that the Government witness, Special Agent Lloyd M. Tucker, may testify from his reports as to the total of the items going to make up said assets and liabilities without producing any supporting documents or records. It is further stipulated as to items of "disbursements" and "expenditures" made by the defendant during the years enumerated which are claimed

by the Government to be non-deductible, the said witness may testify as to the total of such items for the years above enumerated without producing any supporting records.

On stipulation of counsel, it is ordered that the Clerk release all the government's exhibits heretofore admitted in evidence, to the United States Attorney.

The said United States Attorney now reads the Indictment to the jury and states to the jury the defendant's plea of Not Guilty to said Indictment. Thereafter, Norman Herring, Esquire, states the defendant's case to the jury.

Government's Case

Rex E. Webb is now sworn and examined on behalf of the Government.

The following Government's exhibits are now admitted in evidence:

1. Income Tax Return of Edward B. and Rafaela Calderon for the year 1946.
2. Income Tax Return of Edward B. and Rafaela Calderon for the year 1947.
3. Income Tax Return of Edward B. and Rafaela Calderon for the year 1948.
4. Income Tax Return of Edward B. and Rafaela Calderon for the year 1949.

Hubert B. Claunts is now sworn and examined on behalf of the Government.

The following Government's exhibits are now admitted in evidence:

5. Ledger Card Savings Account of **Edward B. Calderon** and **Rafaela Calderon**.

6. Savings deposit slips (3).

Eugene C. Hammell is now sworn and examined on behalf of the Government.

The following Government's exhibits are now admitted in evidence:

7. Savings Account, Bank of Douglas.

8. Deposit Slips for savings account of **Edward B. Calderon** (19).

Thereupon, at twelve o'clock noon, it is ordered that the further trial of this case be continued to two o'clock p.m., this date, to which time the jury, being first duly admonished by the court, the defendant and counsel are excused.

Subsequently, at two o'clock p.m., the jury and all members thereof, the defendant and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

Eugene C. Hammell is now recalled and further examined on behalf of the Government.

The following Government's exhibits are now admitted in evidence:

9. Bank records of the Commercial Account of **Edward B. Calderon** from January, 1945, to January, 1950.

10. Ledger sheets, Commercial Account of **Coronado Cafe** from May 10, 1945, to April 25, 1950.

Lloyd M. Tucker is now sworn and examined on behalf of the Government.

Defendant's exhibit A, notes of **Lloyd M. Tucker**, is now admitted in evidence.

And thereupon at 4:30 o'clock p.m., it is ordered that the further trial of this case be continued until October 22, 1952, at 10:00 o'clock a.m., to which time the jury, being first duly admonished by the Court, the defendant and counsel are excused.

In the District Court of the United States
for the District of Arizona

MINUTE ORDER

May 1952 term, at Tucson.

Minute entry of Wednesday, October 22, 1952
(Tucson Division).

Honorable James A. Walsh, United States District Judge, presiding.

[Title of Cause.]

The jury and all members thereof, Frank E. Flynn, Esquire, U. S. Attorney, and K. Berry Peterson, Esquire, Assistant U. S. Attorney, the defendant and his counsel are present pursuant to recess and further proceedings of trial are had as follows:

Government's Case Continued

Rex E. Webb, heretofore sworn, is now recalled and further examined on behalf of the Government.

Government's exhibit 11, statement of the defendant, Edward B. Calderon, is now admitted in evidence.

Eugene C. Verdugo is now sworn and examined on behalf of the government.

Whereupon, the Government rests.

Counsel for the defendant now moves that this case be dismissed on the basis that the Government has failed to prove its case, and

It Is Ordered that said motion be and it is denied.

Defendant's Case

The following witnesses are now sworn and examined on behalf of the defendant; Frank Sharpe, Jr., George Fleetham, Percy Bowden, Curtis Page, Henry Beumler.

Thereupon, at 11:50 o'clock a.m., It Is Ordered that the further trial of this case be continued to 1:30 p.m., this date, to which time the jury, being first duly admonished by the court, the defendant and counsel are excused.

Subsequently, at 1:30 o'clock p.m., the jury and all members thereof, the defendant and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

Defendant's Case Continued

L. R. Acosta is now sworn and examined on behalf of the Government.

The defendant, Edward B. Calderon, is now sworn and examined in his own behalf.

The following Government's exhibits are now admitted in evidence:

12. Photostatic copy of Income Tax Return for the year 1945.

13. Photostatic copy of Income Tax Return for the year 1944.

Edward B. Calderon, heretofore sworn, is now recalled and further examined in his own behalf.

Defendant's exhibit B, net worth statement of Edward B. Calderon, is now admitted in evidence.

And the defendant rests.

Both sides rest.

Counsel for the defendant renews defendant's motion to dismiss, and

It Is Ordered that said motion be and it is denied.

All the evidence being in, the case is argued by respective counsel to the jury. Whereupon, the Court duly instructs the jury and said jury retire at 5:35 o'clock p.m. in charge of two sworn bailiffs to consider of their verdict.

It Is Ordered that the Marshal provide meals for said jury and their bailiffs during the deliberation of this case at the expense of the United States.

Subsequently, the defendant and all counsel being present, the jury return in a body into open Court at 8:35 o'clock p.m., and all members thereof being present, are asked if they have agreed upon a verdict. Whereupon, the Foreman reports that they have agreed and presents the following verdict, to-wit:

[Title of Cause.]

VERDICT

We, The Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant Edward B. Calderon Guilty as charged

in Count One; Guilty as charged in Count Two; Guilty as charged in Count Three; Guilty as charged in Count Four, as charged in the Indictment.

FRANK BRYAN ROE,

Foreman.

The verdict is read as recorded and no poll being desired by either side, the jury is discharged from the further consideration of this case and from further service during this term of court.

It Is Ordered that this case be and it is set for sentence on Monday, November 10, 1952, at ten o'clock a.m., and It Is Further Ordered that the defendant continue on his own recognizance.

In the District Court of the United States
for the District of Arizona

MINUTE ORDER

November 1952 term, at Tucson.

Minute entry of Monday, November 10, 1952
(Tucson Division).

Honorable James A. Walsh, United States District Judge, presiding.

[Title of Cause.]

This case comes on regularly for sentence this day. K. Berry Peterson, Esquire, Assistant U. S. Attorney, appears on behalf of the government. The defendant, Edward B. Calderon, is present in person with his counsel, Shelley Richey, Esquire,

and is afforded an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment and counsel for the defendant makes a plea for clemency. Thereupon, the Court finds that no legal cause appears why judgment should not now be imposed and renders judgment as follows:

JUDGMENT

On this 10th day of November, 1952, at Tucson, Arizona, came the attorney for the Government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violating Title 26, United States Code, Section 145(b)(c) (Income tax evasion), as charged in Counts 1, 2, 3 and 4 of the Indictment.

The Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby fined in the sum of \$7,500.00 on Count 1 and fined in the sum of \$2,500.00 on Count 4.

It Is Further Adjudged that the imposition of sentence on Counts 2 and 3 be suspended and that said defendant be placed on probation for a period of three (3) years, conditioned that the fines imposed on Counts 1 and 4 be paid within five days; that the defendant return and pay any and all

taxes and assessments which any taxing authority shall hereafter levy against him and that he conduct himself as a law abiding citizen.

JAMES A. WALSH,

United States District Judge.

In the District Court of the United States for the
District of Arizona

No. C-13083—Tucson

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD B. CALDERON,

Defendant.

JUDGMENT

On this 10th day of November, 1952, at Tucson, Arizona, came the attorney for the Government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violating Title 26, United States Code, Section 145(b)(c) (Income tax evasion), as charge in Counts 1, 2, 3 and 4 of the Indictment.

The Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, It Is Ad-

judged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby fined in the sum of \$7,500.00 on Count 1 and fined in the sum of \$2,500.00 on Count 4.

It Is Further Adjudged that the imposition of sentence on Counts 2 and 3 be suspended and that said defendant be placed on probation for a period of three (3) years, conditioned that the fines imposed on Counts 1 and 4 be paid within five days; that the defendant return and pay any and all taxes and assessments which any taxing authority shall hereafter levy against him and that he conduct himself as a law abiding citizen.

/s/ JAMES A. WALSH,

United States District Judge

[Endorsed]: Filed Nov. 10, 1952.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Comes Now the defendant, Edward Calderon, and files this, his Notice of Appeal:

1. The name of the appellant is Edward Calderon, and his address is 431 Tenth Street, Douglas, Arizona.

2. The appellant's attorneys are Richey & Herring, comprised of Norman Herring and W. Shelley

Richey, whose address is 1001 Valley National Building, Tucson, Arizona.

3. The defendant was charged with four counts, each count involving the offense of fraudulently failing to disclose his actual income and to pay the tax thereon during the years 1946, 1947, 1948, and 1949, in violation of Title 26, Section 145 (b) and (c), U.S.C.

4. After a verdict of "Guilty", the Judgment of the Court was entered on Monday, the 10th day of November, 1952. The defendant was sentenced to pay a fine in the amount of \$7,500.00 on Count One, and \$2,500.00 on Count Four of the Indictment; no jail sentence was imposed. Imposition of sentence on Counts Two and Three was suspended on condition the fines imposed on Counts One and Four be paid within 5 days, that all taxes and assessments hereafter levied be paid, and that the defendant conduct himself as a law abiding citizen.

I, Edward Calderon, the above-named defendant, appellant, hereby appeal to The United States Circuit Court of Appeals, Ninth Circuit, from the abovestated Judgment and the whole thereof.

Dated this 18th day of November, 1952.

RICHEY & HERRING,

Attorneys for Appellant, Edward
Calderon,

/s/ **NORMAN HERRING,**
Member of the Firm

[Endorsed]: Filed Nov. 18, 1952.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,
District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of United States of America, Plaintiff, vs. Edward B. Calderon, Defendant, numbered C-13083 Tucson, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies of the minute entries are true and correct copies of the originals thereof remaining in my office in the city of Tucson, State and District aforesaid.

I further certify that said original documents and said copies of the minute entries constitute the entire record on appeal in said case as designated in the Appellant's Designation filed therein and made a part of the record attached hereto and the same are as follows, to-wit:

1. Indictment, filed October 20, 1951.
2. Minute entry of January 28, 1952.
3. Minute entry of August 15, 1952.
4. Minute entry of October 21, 1952.
5. Minute entry of October 22, 1952.

6. Government's Exhibits 1 to 13 and Defendant's Exhibits A and B.

7. Verdict, filed October 22, 1952.

8. Minute entry of November 10, 1952.

9. Judgment, filed November 10, 1952.

10. Reporter's Transcript of Testimony, filed December 16, 1952.

11. Order for Payment of Fine to Clerk in Escrow Pending Appeal, filed November 18, 1952.

12. Notice of Appeal, filed November 18, 1952.

13. Designation of Record on Appeal, filed November 18, 1952.

I further certify that the Clerk's fee for preparing and certifying this said record on appeal amounts to the sum of \$3.60 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court this 24th day of December, 1952.

[Seal]

WM. H. LOVELESS,
Clerk

/s/ By CATHERINE A. DOUGHERTY,
Chief Deputy.

**In the District Court of the United States
for the District of Arizona**

No. C-13083

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD B. CALDERON,

Defendant.

TRANSCRIPT OF RECORD

Appearances: Mr. Frank Flynn, United States Attorney, and Mr. K. Berry Peterson, Assistant United States Attorney, for the plaintiff. Mr. Norman Herring and Mr. Shelley Richey for the defendant.

The above entitled matter came up for trial before the Honorable James A. Walsh, Judge, and a Jury, on the 21st day of October, 1952, at Tucson, Arizona, and the following proceedings were had, to wit:

The Clerk: Number C 13083, United States of America versus Edward B. Calderon.

Mr. Peterson: The Government is ready.

Mr. Richey: Defendant is ready.

The Court: Have you called the roll of the Jury?

The Clerk: No, your Honor. [1*]

(Jury roll called.)

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

The Court: The Clerk will call the names of twenty-eight jurors.

(Jury panel sworn.)

The Court: Ladies and gentlemen, the case for trial today is a criminal case. It is a criminal prosecution instituted by the United States of America as the plaintiff against Edward B. Calderon. Mr. Calderon, would you rise, please. This is Mr. Edward Calderon, the defendant, and I am informed he resides at Douglas, Arizona.

The prosecution is based upon the charge of violation of the Internal Revenue laws of the United States. In brief, the defendant is charged in four counts or four charges with willfully and knowingly having attempted to evade and defeat certain income taxes the Government contends were due from him and his wife. That in substance is the nature of the case.

The defendant is represented by Mr. Herring, who is the gentleman in the grey suit at this end of the table, and by Mr. Riehey, his partner. The Government is represented in the case by Mr. K. Berry Peterson, who is the gentleman with his back to the jurors in the box and the one closest to the Court; the Government is also represented by Mr. Frank Flynn, seated next to Mr. Peterson. He is the United States Attorney for the District of Arizona.

I will ask you ladies and gentlemen if any of you or any [2] members of your immediate family to your knowledge are acquainted with the defendant Calderon. You are, sir? What is your name?

Mr. Sabor: Sabor. I have done business with

him is the only acquaintance I have with him is a business acquaintance.

The Court: That is a business acquaintanceship?

Mr. Sabor: I sold him goods.

The Court: Has that been a continuous or intensive relationship?

Mr. Sabor: It has been over a year ago.

The Court: It has not been something carried on for a great number of years?

Mr. Sabor: No, sir.

The Court: In view of that acquaintanceship do you feel, Mr. Sabor, that there would be any embarrassment to you or that you would be prejudiced in one way or the other if you were selected?

Mr. Sabor: No, sir, I don't think so.

The Court: Do you think you could do your duty and try the case from the evidence from the witness stand and from the Court's instructions if you were selected.

Mr. Sabor: I do, sir.

The Court: Was there any other juror that answered that question affirmatively?

Have any of the lawyers in the case—I have mentioned [3] Mr. Herring, Mr. Richey, Mr. Flynn and Mr. Peterson—have any of those attorneys in the case ever represented any of you as your counsel, or have they to your knowledge ever represented any members of your immediate family?

Now, possibly all of the counsel being rather well known, one or the other of them may be known to you; they may be acquaintances of yours. If that is true I will ask any of you acquainted with coun-

sel if there would be anything in that relationship that would tend to influence you, embarrass you, in any manner if you were chosen as a trial juror in this case. Do any of you know of the facts in the case or purported facts, whether gathered from newspaper stories or rumors or any fashion? Do any of you know or think you know anything about the facts in the case?

Do any of you have any prejudice one way or the other concerning a prosecution of this type, that is, a prosecution for violation of income tax laws of the United States?

Do any of you have any feelings or conviction that the income tax laws, the laws involving laws on income tax, are bad laws?

Have any of you or any members of your immediate family to your knowledge ever had any controversy or dispute with the Bureau of Internal Revenue?

Are any of you or any members of your immediate family employees of the United States Government. [4]

Mr. Nicholas: Retired from the Navy.

The Court: Would that fact influence you in any way if you were chosen as a juror in this case?

Mr. Nicholas: No, sir. You just asked if I was an employee of the United States.

The Court: I asked that, and it is important that counsel know. I appreciate your stating exactly your situation because it may interest counsel. I take it from your answer you could, if chosen

as a juror, could fairly try this case both for the Government and the defendant.

A Juror: Your Honor, I have a brother that works for Civil Service.

The Court: I take it your answer to my question regarding your ability to try the case fairly and impartially, there is nothing by reason of the fact that your brother is in the Government service that would influence you in any way?

The Juror: No, sir.

A Juror: I am employed by the Agricultural Extension Service.

The Court: Could you, if chosen as a juror, try the case fairly and impartially both for the Government and the defendant?

The Juror: Yes.

The Court: Are any members of the jury or your immediate families engaged in law enforcement work, that is, deputy [5] sheriff, police officer or peace officer? I take it some of you have had previous service on the jury; you may know and others may not know, when the evidence is all in and counsel have made their arguments the Court instructs the jury as to the law, the law applying to the particular case on trial. It is the duty of the jurors to take the law as the Court gives it to them. In other words, they take the law from the Court and it is their duty to apply the law as the Court gives it to them, regardless of the validity or soundness of the law. Is there any juror that could not do that if chosen as a juror in this case?

All of you, I am sure, are familiar with the

proposition that in a criminal case the burden rests in the Government to establish the guilt of the defendant from the evidence beyond all reasonable doubt. That is the burden which the law imposes on the Government. Is there any juror that has any quarrel with that situation or believes it is unsound? Do any of you know any reason whatever, whether I have mentioned it, any reason whatever why you couldn't if chosen as a juror in this case try this case fairly and impartially both as far as the Government and the defendant are concerned?

Do counsel have any questions?

Mr. Peterson: No questions, your Honor.

Mr. Herring: Ladies and gentlemen, have any of you sat on a jury panel within the last year in this Court? [6]

Do any of you have any relatives who have sat on a jury panel within the last year in this Court?

Any members of your immediate family been on a jury panel within the last year?

I take it there being no response you have none.

The Judge mentioned there will be instructions given to the jury at the close of all the argument and close of all the evidence, and I take it from your answers, or rather from your failure to answer, each of you would be guided by those instructions as applied to the facts and notwithstanding return a verdict either for the defendant or the Government if from those instructions and the facts you thought that was the right thing to do? That is correct.

Now, in the event it appears that Mr. Calderon here has failed to pay his income tax which was due and it would appear to you that he failed to pay this tax because he believed he was doing exactly right, that is, he didn't know he owed it, would any of you feel——

Mr. Peterson: Just a moment, your Honor, we object to that question. It is argumentative. I don't think it is a proper question.

The Court: That is not proper voir dire. Objection sustained.

Mr. Herring: Do you feel merely because the Government is bringing this prosecution there must be something to it? [7] You realize that very often cases come before the courts and before juries in which the question to be determined is the intent or intention with which a defendant or a man has done a particular act, and it is up to you to decide what that intention is from all the evidence. You understand that.

In this instance is there any one of you who feels after hearing this discussion from the Judge and myself you couldn't act as a fair and impartial juror in this case? In other words, any of you feel if you yourself were charged in a case of this kind, or someone of your immediately family were charged with this same offense, would you be willing to have people in your own individual frame of mind sit as a trial juror? I take it by your silence you would, all of you, feel you can be fair and impartial.

Now, I realize that asking questions like this to

hurry things along, in a group, it takes a little moral courage to put up your hand. But I want to be certain about this, both for the defense and the Government. Do any of you feel that merely because a Treasury Department official of the Government brings a charge of this kind there must be something to it? If you do think so, put up your hand because after all none of us here want an advantage. All we want you to do is be completely fair and impartial.

Do any of you have the slightest feeling in your mind that merely because the Government brings a charge there must [8] be something to it?

That is all.

The Court: Counsel will strike the jury.

(Jury sworn.)

The Court: The jurors now in the body of the court room, you will be subject to call. Thank you for your attendance this morning.

Mr. Flynn: At this time we would like to read into the record a stipulation that counsel have stipulated to. I will read it from the record, which is identical with the former stipulation.

The Court: Very well.

Mr. Flynn: It is hereby stipulated that with reference to the assets and liabilities of the defendant as of December 31st of each of the years 1945 to 1949, inclusive, with the exception of the items of assets designated as "Cash on Hand" and "Cash in Bank" that the Government witness, Special Agent Lloyd M. Tucker, may testify from his reports as to the total of the items going to make

up said assets and liabilities without producing any supporting documents or records.

It is further stipulated as to items of "Disbursements" and "Expenditures" made by the defendant during the years enumerated which are claimed by the Government be non-deductible the said witness may testify as to the total of such items for the years above enumerated without producing any [9] supporting records.

We ask the record show that is stipulated to by the defense and the Government.

The Court: The record may so show.

Ladies and gentlemen, counsel has read to you a stipulation of an agreement entered into between them in this case. That was the purpose of counsel's reading these agreements between counsel in this case.

Mr. Peterson: Your Honor, at this time may I have an Order releasing the Government's exhibits in the Clerk's file to the United States Attorney's Office, all Government exhibits?

The Court: There may be such an Order releasing to the United States Attorney all Government exhibits in the files.

Mr. Herring: Could the record further show in the event the Government does not use these exhibits counsel for the defense may also have access to them?

The Court: Yes, both counsel have free access to any exhibits in the file.

Ladies and gentlemen, throughout the trial of the case the Court takes brief recesses for the con-

venience of counsel and jurors. Ordinarily those recesses are approximately for fifteen minutes. In this particular instance there is some documentary evidence to be prepared for admission here, so at this time we will take our first recess. We will take it until [10] 11:15. I think we will save a little time by giving counsel a chance to get their papers in order. So we will have a recess at this time.

Mr. Peterson: I don't think we can get these together and go on then with these witnesses at that time.

The Court: That is half an hour. We will take a recess to 11:15. I think in thirty minutes you should be able to get the records in shape.

Ladies and gentlemen, during the recesses do not discuss the case among yourselves or with anybody else. I will refer to that admonition from time to time. It is most important you do not discuss the case with anybody else and you do not make up your minds until it is finally submitted to you. That admonition will hold throughout the trial and until the conclusion of the trial.

We will recess until 11:15.

(Recess.)

The Court: Proceed with your statement, **Mr. Peterson.**

(Indictment read by Mr. Flynn.)

(Opening statement by Mr. Herring.)

The Court: Call your first witness.

REX E. WEBB

called as a witness herein, having been first duly sworn, testified as follows: [11]

Direct Examination

Q. (By Mr. Peterson): Please state your name.

A. Rex E. Webb.

Q. Where do you live?

A. 5015 North Tenth Place, Phoenix, Maricopa County, Arizona.

Q. What is your business?

A. Deputy Collector Instructor, Bureau of Internal Revenue, United States Treasury Department.

Mr. Peterson: May I have these exhibits marked for identification.

(Government's Exhibits 1, 2, 3 and 4 marked for identification.)

Q. Mr. Webb, I hand you Government's Exhibit 1 for identification and ask you if you know what that document is.

A. Yes, sir, this is a joint income tax return filed for the year 1946 by Edward B. Calderon and wife.

Q. Do you know where that was filed?

A. With the Collector of Internal Revenue at Phoenix, Arizona.

Q. Is that part of the official records of the Internal Revenue Department? A. It is.

Q. Kept in the regular course of business?

A. Yes, sir. [12]

Mr. Peterson: We offer that in evidence, your Honor.

(Testimony of Rex E. Webb.)

Mr. Herring: May I see it, please. No objection.

The Court: It may be admitted.

(Government's Exhibit 1 in evidence.)

Q. I will hand you Government's Exhibit 2 for identification and ask you if you recognize this document, Mr. Webb. A. I do.

Q. What is that?

A. A federal income tax return filed for the year 1947 by Edward B. Calderon and wife.

Q. And that is part of the records of the Internal Revenue Department in Phoenix, is it?

A. It is.

Mr. Peterson: We offer this in evidence.

Mr. Herring: No objection.

The Court: It may be admitted.

(Government's Exhibit 2 in evidence.)

Mr. Peterson: I hand you Government's Exhibit 3 for identification and ask you if you recognize that document, Mr. Webb.

A. I do.

Q. What is it?

A. A federal income tax return filed for the year 1948 by Edward B. Calderon and wife.

Mr. Peterson: We offer this in evidence. That is part [13] of the records of the Internal Revenue Department at Phoenix, Arizona?

A. It is.

Mr. Herring: No objection.

The Court: It may be admitted.

(Government's Exhibit 3 in evidence.)

Q. Mr. Webb, I hand you Government's Exhibit

(Testimony of Rex E. Webb.)

4 for identification and ask you if you recognize this exhibit and this document. A. I do.

Q. What is that?

A. The federal income tax return filed for the year 1949 by Edward B. Calderon and wife.

Q. Yes, sir. That is part of the records of the Internal Revenue Department at Phoenix?

A. It is.

Mr. Herring: No objection.

The Court: It may be admitted.

(Government's Exhibit 4 in evidence.)

Mr. Peterson: You may cross examine. At this time, your Honor, I ask for permission to return Mr. Webb to the witness stand at a later time on another matter.

The Court: Very well.

Mr. Herring: In order to save time may we have your avowal you will return him at a later time?

Mr. Peterson: Yes.

Mr. Herring: No questions.

The Court: I take it, Mr. Herring, you are reserving your cross examination, if you have any, until he returns?

Mr. Herring: That is right.

The Court: Very well. You may step down.

HUBERT B. CLOUNTS

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Peterson): Will you just state your name. A. Hubert B. Clounts.

Q. Where do you live, Mr. Clounts?

A. 1009 Ninth Street, Douglas, Arizona, Cochise County.

Q. What is your business?

A. Assistant Manager of the Valley National Bank.

Mr. Peterson: May this be marked for identification.

(Government's Exhibit 5 marked for identification.)

Q. I hand you a document now marked as Government's Exhibit 5 for identification, Mr. Clounts, and ask you if you recognize what that is.

A. Yes, sir, I do.

Q. Will you just tell the Judge and the jury what that is.

A. That is a joint savings account for E. B. or Rafaela [15] Calderon.

Q. Between what dates?

A. Between July 3rd of '48 up to December 1951. That is a present balance on there now, also it is up to now.

Mr. Peterson: We offer this in evidence, your Honor.

Mr. Herring: May I see that, please. May I ask

(Testimony of Hubert B. Clounts.)

Mr. Clounts a question or two about this exhibit?

The Court: Very well.

Q. (By Mr. Herring): Mr. Clounts, you never saw this before in your life, did you?

A. No, sir, I have never seen that ledger card.

Q. Except for what is printed on it you don't know what bank it is from, do you?

A. Well, no. That is our standard form. That is the bank form.

Q. Just answer the question, please. Except for the way it looks it could be from any bank in the country, couldn't it? Is that right?

A. No, sir, that is our form.

Q. Do you know who prints these forms for you?

A. No, sir.

Q. Do you know very many banks use this form?

A. No, sir.

Q. As far as you are concerned is there anything on here that would point out to you unerringly this was from your [16] bank? Where does it say that on here? Where does it say on there it is from your bank?

A. The Valley National Bank isn't on here.

Q. You never saw this before in your life?

A. No, sir, I never saw that particular card.

Mr. Herring: I object to it on the ground the proper foundation has not been laid.

The Court: The objection will be sustained.

Mr. Peterson: Well, your Honor, then that means I will have to take a recess on this trial because the man that was originally here in charge

(Testimony of Hubert B. Clounts.)

of that I found out Monday afternoon was in Kingman, it was impossible to get him down here at that time in order to prove this case. I will have to have time to obtain a witness.

The Court: We can go ahead with other evidence and you can send for him. This is one particular exhibit.

Mr. Peterson: It is a very important exhibit.

The Court: I recognize that, but let's proceed and counsel can go ahead.

Mr. Peterson: May I ask a question or two. Didn't you check up with the records of the bank in regard to the savings account of Edward B. Calderon before you left Douglas? A. Yes, sir.

Q. Does this document coincide with it?

A. That is the balance in our bank. [17]

Q. That is the balance in your bank?

A. Yes, sir.

Q. From the records of your books?

A. Yes.

Q. This is merely a copy of it?

A. Yes, sir.

M. Peterson: We offer it again.

The Court: Any objection?

Mr. Herring: Yes. The figures, not only the balance, but the figures when deposits were made and everything else is vitally important. Your Honor, counsel very well knew this exhibit was important and the means have been available for the Government for a long time to come in here with a witness to testify about these things so as to leave no doubt.

(Testimony of Hubert B. Clounts.)

I do wish to object. I don't think it is probable or possible or reasonable to try and identify an exhibit like this by this means.

The Court: The objection will be sustained.

Mr. Peterson: Your Honor—will be what?

The Court: Sustained.

Mr. Peterson: Of course the situation, Mr. Herring says we had ample time, I did have ample time——

The Court: That isn't the basis of the Court's ruling. There are certain rules of evidence for admission of documents. You must make proper identification; obviously it hasn't been done here. Why the man that could identify it isn't here I don't know. I am only going by the rules in regard to identification.

Mr. Peterson: The subpoena was issued three weeks ago. I was only notified Monday afternoon late the man who testified before was in Kingman, it would be impossible to get him down here by this time this morning. I instructed the bank to send me somebody who had access to the records. That is why this man is here.

Mr. Herring: Perhaps we can assist the Government on this, if I could ask the witness a question or two. We have no desire to just throw a big sprag in the wheel of this proceeding because Mr. Peterson wasn't prepared.

Mr. Clounts, do you have in your pocket a copy of these records which you took from the Valley Bank this morning? A. Yes, sir.

(Testimony of Hubert B. Clounts.)

Q. (By Mr. Herring): Well, get them out, please. Do you have a copy of this record?

A. This is a copy of the original record there. The Court has our original file.

Q. You took that from the records of the Valley Bank in your official capacity before you left Douglas, is that right? A. Yes, sir.

Mr. Herring: Could I see that, please.

(Document handed to counsel for defendant.)

Mr. Herring: Your Honor, since we have compared this photostat which he brought with him with the exhibit Mr. Peterson offers, and in view of the man's testimony, we have no objection now to the introduction of this exhibit in evidence. May we have this photostat for our use? You have no further use for it, do you?

The Witness: That is our file.

Mr. Herring: That is the only file you have?

The Witness: Yes, sir. The Court has our original file.

Mr. Herring: Well, then under those circumstances I will return it to you. We have no objection to it.

The Court: Government's Exhibit No. 5 for identification will be admitted in evidence.

(Government's Exhibit 5 in evidence.)

Q. (By Mr. Peterson): I will ask you to examine Government's Exhibit 5 for identification and could you tell from that the amount of the deposit in this savings account at the end of the year 1948 and at the end of the year 1949?

(Testimony of Hubert B. Clounts.)

Mr. Herring: Your Honor, I believe the exhibit having been introduced in evidence speaks for itself.

The Court: May I see it. I think before we go any further we should have it marked in evidence so the record will be straight.

Mr. Peterson: I made my motion and he said he had no objection. [20]

The Court: No, the Clerk has not made the admission. It is now Government's Exhibit 5 in evidence. He may answer.

A. At the end of 1948 there was \$762.08; at the end of 1949 there was \$1,776.92.

The Court: When you say "the end" you mean on December 31, 1948 and December 31, 1949?

A. Yes, your Honor.

Mr. Peterson: May this be marked for identification, please, being three slips of paper.

(Government's Exhibit 6 marked for identification.)

Q. I hand you Government's Exhibit 6 for identification and ask you before your coming here if you made any investigation as to what these are, Mr. Clounts.

A. Yes, sir.

Q. Did you take any record from the bank as to what they were?

A. Yes, sir.

Q. Do you have that record with you?

A. Yes, sir.

Q. Can you state from that record and those slips as to what they are?

A. These are deposit slips through the savings account of Edward Calderon.

(Testimony of Hubert B. Clounts.)

Q. What were the dates those were made?

A. Deposit made July 7, 1948; July 3, 1948; and June 6, 1949. [21]

Mr. Peterson: Yes, sir. We offer these in evidence.

Mr. Herring: No objection.

The Court: It may be admitted.

(Government's Exhibit 6 in evidence.)

Mr. Herring: By the way, your Honor, if this gentleman would like to replace these exhibits with the photostatic copies he has and take the original back to his bank, we have no objection. That depends on what the Government wishes to do.

Mr. Peterson: I think we had better keep the original exhibits here until after the trial.

The Court: Very well.

Mr. Peterson: You may cross examine.

Mr. Herring: No questions. Your Honor, Mr. Clounts came from out of town. We would be perfectly willing to stipulate he may go home.

Mr. Flynn: He may be excused as far as we are concerned.

EUGENE C. HAMPEL

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Peterson): State your name.

A. Eugene C. Hampel.

Q. Where do you reside? [22]

(Testimony of Eugene C. Hampel.)

A. Douglas, Arizona.

Q. How long have you resided there?

A. Since 1916.

Q. What is your employment?

A. Assistant Cashier for the Bank of Douglas.

Q. How long have you been so employed?

A. I have been an employee of the Bank of Douglas since 1936.

Mr. Peterson: May I have this marked for identification.

(Government's Exhibit 7 marked for identification.)

Q. Mr. Hampel, I hand you Government's Exhibit 7 for identification, the exhibit consisting of two sheets of paper, and ask you if you can state what that is.

A. The first sheet is the original record of savings account of Mr. and Mrs. Edward Calderon, Account Number 11796, from October 28, 1935 to January 12, 1949. The second sheet is a certified copy of the same savings account from February 24, 1949 to December 22nd, 1949. In other words, it is a continuation of the account which leaves off on this sheet ending January 12, 1949.

Q. That is a part of the records of the Bank of Douglas? A. Yes, sir.

Q. Kept in the regular course of business?

A. Yes.

Mr. Peterson: We offer this exhibit in evidence, your Honor. [23]

(Testimony of Eugene C. Hampel.)

Mr. Herring: We have no objection. We would like to see it after it is marked.

The Court: It may be admitted.

(Government's Exhibit 7 in evidence.)

Mr. Peterson: Will you mark this series for identification as one exhibit.

(Government's Exhibit 8 marked for identification.)

Q. Mr. Hampel, I hand you Government's Exhibit 8 for identification, being a series of deposit slips, and ask you what they are.

A. These are deposit slips to the savings account of Edward Calderon. You want me to detail them?

Mr. Peterson: Well, we offer this in evidence, your Honor.

Mr. Herring: Just what dates, so the record will be straight. Between what dates and how many of them, Mr. Hampel?

The Witness: The first one is October 19, 1945. There are nineteen of them. And the last one is dated December 22, 1949.

Mr. Herring: How many of them?

The Witness: Nineteen.

Q. Are those deposits which are in the Government's exhibit you have in your hand reflected in the record of Government's Exhibit 8, being the records of the bank? [24]

A. They should be, but I couldn't say unless I checked them against the sheet.

Q. Will you do so.

(Testimony of Eugene C. Hampel.)

A. I find one dated May 14, 1946 on the ledger sheet shows May 13, 1946.

Q. Is that for the same amount?

A. Same amount, \$1,000.00. Yes, sir, they are all reflected on these sheets except the date of the one I mentioned.

Q. That might have been——

A. It could have been put in late in an afternoon.

Q. And posted the next morning?

A. Posted the next day.

The Court: I understood, Mr. Peterson, you offered the slips in evidence?

Mr. Peterson: In evidence, yes.

The Court: Any objection?

Mr. Herring: No objection.

The Court: They may be admitted.

(Government's Exhibit 8 in evidence.)

The Court: At this time we will take the noon recess until 2:00 o'clock p.m.

Ladies and gentlemen, please bear in mind the admonition given you before. Don't discuss the case between yourselves or with anyone else and don't make up your minds until the case is finally submitted to you. [25]

(Whereupon a recess was taken at 12:00 o'clock noon until 2:00 o'clock p.m.)

The Court: You may proceed.

Mr. Peterson: May this series of bank records be marked as one exhibit for identification.

(Government's Exhibit 9 marked for identification.)

(Testimony of Eugene C. Hampel.)

Q. Mr. Hampel, I hand you Government's Exhibit 9 for identification being several sheets of bank records, and ask you what those are.

A. These are the bank's record of the commercial account of Edward Calderon from April 12, 1945—no, January 1945 until January 1950.

Q. Until January 1950? A. Yes.

Mr. Peterson: We offer these in evidence, your Honor.

Mr. Herring: You know those are the records of that account, Mr. Hampel? A. Yes.

Mr. Herring: We have no objection to them being in evidence.

The Court: They may be admitted.

(Government's Exhibit 9 in evidence.)

Mr. Peterson: I will ask you to mark this series of bank records as one exhibit for identification.

(Government's Exhibit 10 marked for identification.) [26]

Q. I hand you Government's Exhibit 10 for identification, Mr. Hampel, and ask you if you know what that record is.

A. These are the ledger sheets of the commercial account entitled Coronado Cafe from May 10, 1945 to April 25th, 1950.

Mr. Peterson: We offer this in evidence, your Honor.

Mr. Herring: Excuse me a moment. Mr. Hampel, what are those?

A. It is the individual ledger sheets of account entitled Coronado Cafe.

(Testimony of Eugene C. Hampel.)

Mr. Herring: And you know of your own knowledge and you are sure that is an exact rescript of the account or original ledger sheets?

A. They are the original ledger sheets.

Mr. Herring: No objection.

The Court: They may be admitted.

(Government's Exhibit 10 in evidence.)

Q. Mr. Hampel, do you know of your own knowledge Eddie Calderon was the operator of the Coronado Cafe? A. Yes, I do.

Q. During those periods shown by the records of the bank? A. Yes, sir.

Q. Calling your attention to Exhibits 10 and 11, 10 being the commercial account of Edward Calderon and Exhibit 9 and Exhibit 10, do those records show the balance in those accounts at the end of each year, 1945, 1946, 1947, 1948 and [27] 1949?

A. Yes.

Mr. Peterson: That is all.

Cross Examination

Mr. Herring: I want the exhibit which shows the savings account in the Bank of Douglas, 7, I guess.

Q. Mr. Hampel, handing you this exhibit to refresh your recollection, I ask you to examine it, particularly with reference to the years ending in 1943, along about in October of 1943, would you examine particularly the deposits with reference to that year. When does that record show the last deposit was made in that savings account during the year

(Testimony of Eugene C. Hampel.)

1943, other than interest? I mean the last deposit that was made to the account other than savings account interest. A. June 19.

Q. June the 19th? A. Yes.

Q. And how much was that deposit?

A. \$700.00.

Q. When does the next deposit appear? That is June 19th, 1943, \$700.00? A. Yes, sir.

Q. When does the next deposit appear in that account other than interest? [28]

A. It is on October 19, 1945.

Q. October 19, 1945. And how much was deposited at that time? A. \$1,000.00.

Q. So there was nothing deposited in that account between June of 1943 and October of 1945, is that correct?

A. That is correct, excepting the interest.

Q. Except the interest deposited by the bank?

A. Yes.

Q. Mr. Hampel, during the years 1943 to 1945 there was an Air Base located close to Douglas, was there not? A. I think so.

Q. And at that Air Base there were many cadets and soldiers, that is, air cadets and soldiers?

A. Yes.

Q. Do you know how many?

A. No, I don't.

Q. The smelter was also running at full blast?

A. Yes.

Q. Business in general was excellent in Douglas during that period? A. Yes.

(Testimony of Eugene C. Hampel.)

Q. Especially in the music machine business which the soldiers helped patronize was good, isn't that so? A. I would say so. [29]

Q. In the year 1946 what happened to the Air Base?

A. I don't recall when the Air Base was discontinued.

Q. It was in either late '46 or early '47, wasn't it? A. Somewhere in there.

Q. About that time the smelter cut down on their production too, didn't they, to some extent?

A. I don't recall.

Q. But in general business since 1945, let's say January 1, 1946, business in Douglas has been on a complete downgrade, hasn't it?

A. To a certain extent, yes.

Q. As a matter of fact, until just recently within the last maybe year business in Douglas was very bad after they shut down the Air Base?

A. Yes, it declined. I don't know whether you would call it bad or not but it had declined.

Q. And declined seriously, really?

A. Yes.

Q. Now, referring to the exhibit you have before you, what was the balance in that account as of December 31st, 1949?

A. Well, the 31st after the interest was posted, \$17,334.24.

Q. \$17,300 and what? A. 334.24.

Q. And that exhibit you are speaking of is the Government's Exhibit No. 7, the one you are testi-

(Testimony of Eugene C. Hampel.)

fying from there, the one [30] you have before you?

A. I suppose so. Yes.

Q. It is a record of this savings account in the Bank of Douglas of Eddie Calderon and his wife?

A. That is right.

Q. Would you hand the witness Government's Exhibit 9, please.

(Government's Exhibit 9 handed to witness.)

Q. Now, this Exhibit 9, Government's Exhibit 9, is before you at this time? A. Yes.

Q. And that is the bank record of the checking account of Edward Calderon?

A. That is right.

Q. That is his business account apparently?

A. Yes.

Q. Calling your attention on that exhibit to the year of December 31, 1945, will you tell me what the balance on that account shows?

A. December 31, 1945, shows a balance of \$693.91.

Q. What was the balance shown by that exhibit as of December 31st, 1947?

A. December 31st, 1947, \$1,665.64.

Q. And what was the balance as shown by that exhibit as of December 31st, 1949?

A. December 31, 1949, \$891.59. [31]

Q. Did you ever see this Mr. Webb here who testified for the Government earlier today, have you seen him before? A. Yes.

Q. One of the times you saw him before was in connection with this case when he came into your

(Testimony of Eugene C. Hampel.)

bank and asked to examine these same records, wasn't it? A. Yes.

Q. At that time he was in company with Mr. Tucker who sits here by Mr. Flynn at Government counsel table?

A. I didn't understand that.

Q. When Mr. Webb came in to look at these records you are testifying from, came in to the bank—by the way, what year was that? 1949? 1950?

A. I don't recall the date.

Q. At any rate, they were investigating Edward Calderon's accounts, is that right?

A. That is right.

Q. Was Mr. Tucker with Mr. Webb? A. No.

Q. Mr. Webb came in by himself?

A. He must have.

Q. Did Mr. Tucker come in and examine the bank records himself?

A. I don't remember seeing him.

Q. If he did, he didn't get it through you? [32]

A. Not that I recall. He might have.

Q. You gave Mr. Webb complete access to all these accounts of Mr. Calderon? A. Yes.

Q. Gave him every cooperation he asked for?

A. Yes.

Mr. Herring: That is all.

Mr. Peterson: That is all. May Mr. Hampel be excused?

Mr. Herring: Yes, we have no objection.

The Court: He may be excused.

LLOYD M. TUCKER

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Peterson): Will you state your name, please. **A.** Lloyd M. Tucker.

Q. What is your business, Mr. Tucker?

A. I am a Special Agent with the Intelligence Division of the United States Bureau of Internal Revenue.

Q. How long have you been such?

A. Since 1945.

Q. Did you make an investigation into the charges of the United States Government against the defendant in this case, one Edward Calderon?

A. Yes, sir.

Q. Did you prepare at the time of your investigation the exhibit which you have in your hand?

A. Yes, sir.

Q. Will you explain to the jury what you mean when you say a "Net Worth Statement"?

A. A Net Worth Statement is a means used by the Government, and by private accountants and in all accounting circles, for determining income for any particular period, a calendar year or any part of a year. It consists of determining an individual's ownership of assets at any particular time, property owned, money that he had, and give him credit for the debts that he owed, his liabilities. You arrive at a figure for the beginning of that period and then you use that same computation for the

(Testimony of Lloyd M. Tucker.)

end of the period, determine his ownership of assets and the liabilities that he had, then also his expenditure of money for personal reasons which are not deductible for income tax purposes. The difference would be termed his increase in net worth.

Q. Mr. Tucker, when you started your investigation did you inquire into particularly the years 1945, '46, '47, '48 and '49, as to the amount of Cash on Hand held by Mr. Calderon at the beginning of those years?

A. Yes, sir, I made such inquiries.

Q. Whom did you inquire from? [34]

A. From Mr. Calderon.

Q. And the year 1945 did you inquire from him as to how much cash he had on hand?

A. Yes, sir.

Q. Did you make an investigation into his checking accounts at the bank as of that date?

A. Yes, sir.

Q. The Bank of Douglas as of December 31, 1945, did you show there what his balance was?

A. He had three accounts in that bank, had two checking accounts and one savings account. I did make those inquiries and I have them here and the balance for each account.

Q. As to the matter of the commercial account, how much did he have on deposit at that time?

Mr. Herring: Just a moment, your Honor. In the first place, it is quite apparent the question is addressed to the witness testifying from something

(Testimony of Lloyd M. Tucker.)

which is not in evidence at this time. He can, of course, elicit from the witness the answer concerning the inquiries he made and perhaps the result of the inquiry, but not by testifying from the exhibit. On that ground we object to it.

Mr. Peterson: This was prepared by you after your investigation, was it not?

A. Yes, it was prepared by Mr. Webb and myself.

Q. And prepared from the records of the bank?

A. Yes.

Q. And what records you could find of Mr. Calderon's? A. Yes.

The Court: I take it he is using the document for the purpose of refreshing his recollection. Objection overruled.

Q. You say there were two checking accounts in the Bank of Douglas? A. Yes, sir.

Q. What were they?

A. One was in the name of Mr. Calderon, which he used for one of his businesses; the other one was in his name doing business as the Coronado Cafe.

Q. And was there still another account?

A. Yes, sir, there was a savings account too.

Q. Now, December 31st, 1945, the beginning of 1946, how much was there on deposit in the bank in the commercial account of Edward B. Calderon?

Mr. Herring: Now then, your Honor, I ask the witness be instructed to answer that question on the basis of the exhibits in evidence. And I further

(Testimony of Lloyd M. Tucker.)

object on the ground the exhibits themselves are the best evidence and they have been put in evidence here by the Government; and that they are the best evidence and the only source of information by which this man could be guided.

Mr. Peterson: I think, your Honor, he stated he took [36] this Net Worth Statement from the records of the bank and from the various accounts of this defendant and from his own statements of the cash on hand he had and compiled this record here.

The Court: As to the Cash on Hand I understood him to say he got that information from Mr. Calderon. If he got this information from bank records, the bank records are of course the best evidence as to what was on hand at a particular time and we have the records in evidence.

Mr. Peterson: These records are in evidence here, they have been produced here in evidence. But you have to have a compilation of all these records to arrive at a Net Worth Statement. You can't put these in before a jury and arrive at some conclusion on it. There has to be some figure which was made out by the Internal Revenue Department as to what the result of all this shows.

The Court: Of course that is just a matter of summing up his testimony. Admittedly the witness is testifying as to what he learned from examination of the bank records and the records are here. The records will show the figure. The witness in making the statement or summing up the net worth, the witness can use the bank records.

(Testimony of Lloyd M. Tucker.)

Q. (By Mr. Peterson): In the case of Edward B. Calderon did you arrive at a Net Worth Statement after your investigation? A. Yes, sir.

Q. From the compilation made from the bank records and from [37] other sources from which you obtained information? A. Yes, sir.

Q. I think you stated that net worth was arrived at by giving the defendant here credit for his liabilities, his expenditures, and so forth and so on, in the compilation of that statement?

A. Yes, sir.

Q. What was the net worth at the end of 1945?

Mr. Herring: I object on the ground the proper foundation has not been laid.

The Court: Don't we have a stipulation regarding that?

Mr. Herring: We have a stipulation, your Honor, in regard to the items made by his investigation concerning all assets except Cash on Hand, Cash in the Banks, for the years 1945, '46, '47 and '48, I believe it is. Now then, this testimony here, the witness is asked to answer a question for which the proper foundation has not been laid in that **he has not yet established** the amount of Cash on Hand or amount Mr. Calderon told him he had on hand at the time. And until that is established there is abundant law to the effect that a Net Worth Statement cannot be admitted in evidence.

The Court: I believe the stipulation does except the Cash on Hand and Cash in the Bank. I believe that would have to be established prelimi-

(Testimony of Lloyd M. Tucker.)

narily, then the balance of the Net Worth Statement would be admissible under the stipulation.

Mr. Peterson: I didn't get that.

The Court: I believe you would have to establish by the witness the Cash on Hand and the Cash in the Bank since those are excepted from the stipulation. You may inquire about those and if those are established the balance of the Statement can be used.

Mr. Peterson: He has already testified here before this objection was made Mr. Calderon stated to him he had in each of these years \$500.00 Cash on Hand. That was where he started from.

The Court: There hasn't been any such testimony here today.

Mr. Peterson: Yes, sir.

The Court: I don't recall it.

Q. (By Mr. Peterson): Where did you receive the information for the Cash on Hand for each one of these years mentioned? Did that come from Mr. Calderon?

Mr. Herring: I object to that as leading and suggestive.

The Court: Yes, it is leading. Don't lead the witness.

Q. Where did you receive the information as to the Cash on Hand for each year?

A. From Mr. Calderon. He told me.

Q. How much did he tell you?

Mr. Herring: Now then, just a moment. I object to that until the proper foundation is laid. If

(Testimony of Lloyd M. Tucker.)

a conversation took [39] place between the witness and this gentleman there must be a proper foundation laid, persons present, time and place. I might further add, your Honor, that in the event it is an admission against interest in relation to this case it would not then be admissible until the corpus delicti has been proven.

The Court: The objection that the proper foundation has not been laid will be sustained. Let's fix the time and place and persons.

Q. Where were you when you questioned Mr. Calderon?

A. In the Post Office Building in Douglas, Arizona.

Q. Who was present with you?

A. Mr. Webb.

Q. Was that where you received the information you testified to here?

A. Yes, that was where we talked about it.

Q. And how much did he tell you he had in each one of these years?

Mr. Herring: Just a minute, your Honor. That is leading and suggesting. The conversation can be repeated at the time and place indicated. I didn't get the time; the place was indicated and not the time, I think.

The Court: The place and persons present was testified to.

Q. What time was that? [40]

A. It was June 18, 1950.

(Testimony of Lloyd M. Tucker.)

Q. And how much did he tell you he had in each one of these years?

Mr. Herring: I object to that. I think the conversation can be repeated and nothing else.

The Court: Let's have the conversation.

Q. State the conversation.

A. Well, at the time we asked Mr. Calderon many questions, as I recall. I asked him when he was born and where he was born and he showed me a Certificate of Naturalization. He showed me how many children he had, what their ages were, and I asked him how he operated his household, how much money he spent each month for personal living expenses. And I asked him how much cash he customarily carried about with him and he stated for many years it had been his habit to have cash on hand—

Mr. Herring: Just a moment, your Honor. I would like for the purpose of the record, so as not to be bothering all the time, to lay my foundation this way. I object to any further conversations between Mr. Calderon and this witness going to the investigation relating to this charge until the corpus delicti has been proven. Until it has, the proper foundation has not been laid to enter into any conversation with Mr. Calderon or relating any conversation concerning him.

The Court: Objection overruled. [41]

Mr. Herring: May the objection be a continuing one?

The Court: Very well.

(Testimony of Lloyd M. Tucker.)

Q. (By Mr. Peterson): From your investigation of the statements of Mr. Calderon how much did he have on hand in the checking account at the end of the year 1945?

Mr. Herring: I make the same objection I made heretofore. The witness was relating the conversation and I was sorry to interrupt but felt I had to. But certainly this question is improper since it calls for a conclusion and not in relation to the facts.

The Court: Yes, I think that last objection is well taken. I might say we haven't as yet covered the matter of Cash on Hand. I understood that was what we were starting out to do.

Mr. Peterson: The only way I see in this case is to take the statement of the defendant what money he had on hand. He couldn't go in his pocket and drag it out of there.

The Court: I think if there is any such evidence the witness ought to testify about any statement made to him by the defendant. We haven't reached that yet.

Mr. Peterson: Yes, your Honor, he has—I hate to disagree with your Honor—he has twice stated the man told him he had \$500.00 each year.

The Court: I don't recall it as yet.

Q. (By Mr. Peterson): Did Mr. Calderon during the conversation [42] you have described here, when Mr. Webb was present, and on the date you have described, did he tell you how much Cash on Hand he had at the end of 1945?

Mr. Herring: That is leading and suggestive.

(Testimony of Lloyd M. Tucker.)

The Court: He may answer.

A. He stated that at all times that it was customary for him to have cash on hand or in his pocket of about \$500.00.

Q. Did he say at that particular time he had \$500.00?

A. Yes, he did. And we were talking about year-end balances and he stated to the best of his recollection and belief he would have had \$500.00 on hand on the last day of each year. However, with respect to the year 1949 I pointed out to him that on January 4th of 1950 he made a deposit in his bank account of \$1,971.50. I asked him if it would be possible for him to accumulate that much cash between January 1 and January 4 and he stated it would not, it must have been some receipts carried over from the end of the year.

Q. Did he inform you how much he had in cash on hand at the end of 1946?

A. Yes, \$500.00.

Q. 1947? A. \$500.00.

Q. And 1948? A. \$500.00.

Q. And 1949? [43] A. \$1,971.50.

Q. Did you make an investigation into the accounts of the Coronado Cafe? A. Yes, sir.

Q. At the time that you were holding a conversation with Mr. Calderon, the time you have described, did he give you any information as to what amounts he had as cash on hand on the last day of 1945?

Mr. Herring: Could the question be directed to

(Testimony of Lloyd M. Tucker.)

the conversation, your Honor? I don't like to keep objecting.

The Court: I take it it is the same conversation. Is that true, Mr. Tucker?

Mr. Peterson: Yes, sir, I said the conversation which you previously described.

A. Yes, sir. Yes, he said he had \$500.00 on hand then.

Q. At that time did he tell you as to how much he had at the end of 1946 relative to cash on hand?

A. Yes, \$500.00.

Q. For 1947? A. \$500.00.

Q. And 1948? A. \$500.00.

Q. And 1949? A. \$1,971.50.

Q. At the time you held the conversation in the Post Office [44] Building in the presence of Mr. Webb and yourself did you question Mr. Calderon any on his savings account in the Bank of Douglas?

A. No, I don't believe we did.

Q. Did you arrive at a Net Worth Statement as to the worth of Edward B. Calderon for each of the years 1945, '46, '47, '48 and '49?

A. Yes, sir, I made that computation.

Q. Will you just explain that to the jury?

A. I beg your pardon?

Q. Will you explain that to the Court and the jury.

Mr. Herring: Now, before that is done I presume by that you mean, Mr. Peterson, he is to testify from the figures he made up?

Mr. Peterson: That is what you agreed to.

(Testimony of Lloyd M. Tucker.)

Mr. Herring: Is that the question you asked?

Mr. Peterson: Yes.

Mr. Herring: To that I object on the ground if he prepared a Net Worth Statement it is the best evidence, and if you have a Net Worth Statement he prepared let's put it in evidence, if it is admissible.

Mr. Flynn: May I call the Court's attention to the stipulation in which he stipulates this witness may testify from his report as to the total of the items going in to make up the assets and liabilities without producing the records. [45] The objection it is not the best evidence is not proper.

The Court: The witness may testify as to how he prepared the Net Worth Statement, if that is what counsel is asking him.

Q. (By Mr. Peterson): Will you proceed now and tell the Court and jury how you prepared this Net Worth Statement?

A. Yes. This Statement goes back to December 31st, 1943. I think we are concerned here with the period December 31, 1945. I have all of his known assets listed, his ownership of United States Treasury Bonds, merchandise inventory, his furniture and fixtures, his coin operated machines, automobiles, land and buildings, bank accounts and cash. I did that for each of the years 1946 through 1949, inclusive. On December 31st, 1945, we determined that his ownership of assets, his bank accounts, that he was worth \$32,000—

Mr. Herring: Just a moment. I object to that as not being responsive to the question. The question

(Testimony of Lloyd M. Tucker.)

was how he put together this Net Worth Statement, not as to the amounts in it. I don't believe that is in evidence yet.

The Court: He may use the amounts if he identifies the separate items.

Mr. Herring: Yes, but not the totals in which cash or cash on hand in banks could be reflected unless I can interrogate the man by voir dire first.

The Court: I think it should be stated by items showing [46] the source of each item.

A. (continuing) On December 31st, 1945, we determined he had cash on hand——

Mr. Herring: Just a moment. To that I object unless I be given a chance to cross examine this man on the conversation he said took place.

The Court: You may cross examine him at the proper time.

Mr. Herring: The point is, your Honor, this. That of course the items that go to make up this Net Worth Statement are based and have their basis and start with Cash on Hand and Cash in Banks. Unless that is correct the Net Worth Statement isn't worth anything because it starts on a false premise entirely. The question now is, he is to be allowed to testify from this thing without first laying the proper foundation to show the sources and correctness of his information to begin with. It is true he has related some conversation with Mr. Calderon. Due to the importance of this thing, if he is going to proceed this way I would like a chance to cross examine him first on voir dire with

(Testimony of Lloyd M. Tucker.)

relation to the very basis of this thing. Now if it can be established, there is nothing wrong in that; if it can't be established and the examination and insecurity or unreliability of the exhibit is shown, it shouldn't be testified from at all.

Mr. Peterson: The only discussion that was entered into, from this witness' testimony at this time, relative to the [47] amount of cash on hand, that was all. The other records upon which he based his net worth are here already in evidence.

The Court: That is very true. I think we are not too far apart, but I think if the witness would testify as to what items he has and the source of the item, in other words, upon what he bases the item, his source for putting that item down, then I don't think you have any difficulty.

Mr. Peterson: With that he is to go into his liabilities and assets and he has to give figures for each year, which Mr. Herring objects to.

The Court: No, I don't think there can be an objection if he gives the sources as he goes along. If he has an item of Cash on Hand on the Net Worth Statement, let him say on what he bases that item. Same way with Cash in the Bank.

Q. (By Mr. Peterson): Did you arrive at a figure of net worth of this defendant on the end of the year 1945? A. Yes, sir.

Q. Upon what did you base that figure?

A. All right, Cash on Hand \$500.00; Cash in the Bank of Douglas checking account of \$688.91; Cash in the Bank of Douglas checking account for

(Testimony of Lloyd M. Tucker.)

the Coronado Cafe \$96.96; Cash in the savings account in the Bank of Douglas \$4,102.77; United States Treasury Bonds of \$5,181.25; Merchandise Inventory \$1,076.60; Furniture and Fixtures \$944.00; Coin Operated Machines \$8,071.00; Automobiles \$1,855.00; Land \$2,300.00 and [48] Buildings \$8,140.00. The total of those items——

Mr. Herring: Now, just a minute. I object to that on the ground the proper foundation has not been laid for stating the total inasmuch as the witness' statement conflicts with Exhibit No. 7, I believe it is already in evidence; the bank records and this man's statement of cash don't jibe by his own testimony.

The Court: The objection will be overruled.

A. (continuing) The total of those items I just related is \$32,956.49. Now, Mr. Calderon had some liabilities. He had depreciation reserve for furniture and fixtures which we allowed him of \$108.07; he had depreciation reserve we allowed him on his coin machines of \$5,145.72; depreciation on automobiles \$431.10; depreciation on buildings of \$1,221.54. A total of those liabilities is \$6,906.43. Those were subtracted from the assets, leaving a net worth on that date, December 31, 1945——

Mr. Herring: Now, just a moment, please. May my same objection go to this statement.

The Court: Very well.

A. (continuing) ——of \$26,050.06. In addition to that there were living expenses of \$3,000.00 added. There was an item of an automobile purchased for his father of \$200.00. There were doctor

(Testimony of Lloyd M. Tucker.)

and hospital bills paid of \$106.50. State of Arizona income tax was paid of \$31.78 and Federal income [49] taxes paid of \$164.64. Shall I continue?

Q. Yes. Will you give the figures at the end of the year 1946, what you arrived at them from, and the basis of your compilation of the net worth and subtraction of the liabilities.

Mr. Herring: May the record show my continuing objection on the ground the proper foundation has not been laid and the error is manifest already?

The Court: The record may show the same objection.

A. Do you want me to enumerate the individual items again?

Q. For 1946, on which you base your figures.

A. On December 31, 1946, Cash on Hand item remains at \$500.00; Bank of Douglas checking account—

The Court: Just a moment, Mr. Tucker. On those items will you tell us, please, the source of them, where you get the \$500.00, where you get any other figure in there. Otherwise there is no way of knowing where they come from.

A. Cash on Hand \$500.00 was taken from Mr. Calderon's statement that he had \$500.00 cash at that time. The Bank of Douglas checking account showed that he had \$1,879.09 in that account and that was taken from the examination of the Bank of Douglas records. In his second checking account at the Bank of Douglas it showed at the end of 1946 he had \$847.53. In his savings account he had

(Testimony of Lloyd M. Tucker.)

\$6,970.44. Both of those items were taken from an examination of the bank's records. His ownership of United States Treasury Bonds was \$5,181.25; that [50] was taken from an examination of the bonds themselves. The Merchandise Inventory was \$1,847.91 and that was obtained through the return which he filed for that year, plus examination of some working papers that were furnished by Mr. Verdago. Furniture and Fixtures which he owned at the end of 1946 was \$1,394.00 and that figure likewise was taken from the return and an examination of some working papers which had been used to prepare the return. The Coin Operated Machines at the end of 1946 is \$24,055.63; that information was obtained from examination of Mr. Calderon's paid checks, examination of some invoices furnished by him, and an investigation of records maintained by various coin operated amusement companies located in various parts of the United States. The ownership of Automobiles was the same as the previous year, \$1,855.00, and that was obtained in part with respect to one automobile which Mr. Calderon owned, the cost of that was taken from his statement and there was another automobile, I believe a truck, and that was taken from the records of one of the automobile companies in Douglas, I don't recall the name right now. The Land, item of Land, was \$2,600.00 and Buildings \$10,943.49. Those two items were taken from an investigation of the County records in Cochise County, from examination of bank records, from certain deeds which Mr.

(Testimony of Lloyd M. Tucker.)

Calderon produced. The total of those figures is \$58,075.34. The Accounts Payable at the end of 1946, \$1,027.44. That figure was determined by [51] an investigation of records of coin operated amusement device companies and their records showed that at the end of the year certain equipment wasn't fully paid for. The depreciation reserve for furniture and fixtures was \$239.97; for coin operated machines \$7,364.12; for automobiles \$506.60; for buildings \$1,624.66. His depreciation was computed in accordance with Internal Revenue regulations, which permit any individual to deduct the cost of property he owns over a certain number of years, and that he should be given credit for that and it should be subtracted from his assets. We did that in this case. We determined that as of the end of 1946 he had liabilities of \$10,762.79. His net worth at the end of 1946, \$47,312.55. Living expenses were the same, \$3,000.00.

We had a conversation with Mr. Calderon on June 18 of 1950 and he stated that——

Q. Who was there?

A. Mr. Webb was there. The conversation took place in the Post Office Building in Douglas. And we questioned Mr. Calderon about the amounts of money he customarily spent for living expenses to maintain himself and family. He stated for many years it had been his custom to regularly give his wife two hundred fifty dollars in cash each month to be used for household expenses and other personal expenses.

(Testimony of Lloyd M. Tucker.)

Mr. Herring: Same objection, to any statement made by Mr. Calderon in relation to these conversations which might be [52] used in this case. The foundation has not been laid, there is no corpus delicti proven.

The Court: Objection overruled.

A. (continuing) In addition to the living expenses, in 1946 Mr. Calderon stated that he spent four hundred dollars for vacation which he took that year. Examination of his paid checks disclosed that he paid seven dollars for medical expenses and in that year one hundred eighty-six dollars federal income taxes paid. Now, for the other years, Mr. Peterson, the source of material would be exactly the same. May I identify the amounts and without explaining the source? The source will be the same.

Q. I think in order to satisfy Mr. Herring I think you had better explain where you got it for each year.

Mr. Herring: On Mr. Tucker's avowal the source is exactly the same, except for my previous objections he can go ahead and give the amounts without giving the source, as far as I am concerned.

The Court: Very well.

A. Cash on Hand as of December 31, 1947, was \$500.00. The Bank of Douglas checking account for Mr. Calderon and his wife was \$1,713.78. The checking account for the Coronado Cafe had a balance of \$270.07. For the savings account in the Bank of Douglas there was a year-end balance of \$4,086.51. United States Treasury Bonds which he had at the end of the [53] year 1947 was \$5,181.25.

(Testimony of Lloyd M. Tucker.)

Merchandise Inventory was \$3,820.68. Furniture and Fixtures \$2,075.09. Coin Operated Amusement Machines \$31,945.95. Automobiles \$1,855.00. Land \$3,100.00 and Buildings \$18,643.49. The total of those items is \$73,191.22.

The depreciation reserve to which he was entitled at the end of that year: for Furniture and Fixtures was \$2,882.46—I am sorry, the Accounts Payable were \$2,882.46—the depreciation reserve for Furniture and Fixtures \$463.96; on Coin Machines \$12,274.96; for Automobiles \$581.10; for Buildings \$2,254.08. The total of the liabilities at the end of 1947 was \$18,456.56. Spent for vacation in that year was the sum of \$543.71; for doctor and hospital bills \$91.00.

On December 31, 1948, Cash on Hand was \$500.00. Cash in the Bank of Douglas checking account \$386.36. And in the second checking account \$162.32. Cash in the Bank of Douglas savings account was \$6,637.07. During the year 1948 Mr. Calderon opened a savings account at the Valley Bank in Douglas and examination of the bank's records disclosed he had a year-end balance in that account of \$762.08. United States Treasury Bonds were held by him on that date in the amount of \$5,181.25. Merchandise Inventory was \$3,090.50. Furniture and Fixtures, \$2,148.45. Ownership of Coin Machines \$40,224.10. Automobiles remained the same, \$1,855.00. Land \$3,100.00. Buildings \$18,643.49. Total assets \$82,692.62. [54]

Accounts Payable at the end of that year were

(Testimony of Lloyd M. Tucker.)

\$1,625.02. Depreciation Reserve: for Furniture and Fixtures was \$727.76; depreciation reserve for Coin Machines \$18,302.33; for Automobiles \$656.60; Buildings \$3,911.82. Total liabilities \$24,323.53. Insurance Premiums paid that year, determined from examination of Mr. Calderon's paid checks, was \$200.00. Money spent for doctor bills was \$40.00.

At the end of 1949 Cash on Hand \$1,971.50. In the Bank of Douglas checking account there was \$891.59—

Mr. Herring: Excuse me, what year is this?

The Witness: This is the end of 1949.

Mr. Herring: Beginning of 1950?

The Witness: Yes, \$891.59 in the Bank of Douglas checking account. There was for the Coronado Cafe \$13.60. In the savings account in the Bank of Douglas we have on this statement \$18,034.24. Information which was obtained subsequent to the preparation of this statement discloses that there was a withdrawal made.

Q. And the correct balance should be?

A. \$17,334.24.

Mr. Herring: Now, just a moment. That information you are talking about there, does that appear on the statement you are reading from?

The Witness: Yes, the figure \$18,034.24 appears here.

Mr. Herring: That is right, and the other information [55] that caused you to change that came from me, didn't it?

The Witness: No.

(Testimony of Lloyd M. Tucker.)

Mr. Herring: It didn't?

Q. Go ahead with your statement, we will get to that in a moment.

A. The balance in the Valley National Bank savings account was \$1,776.92. Ownership of United States Treasury Bonds at the end of 1949 was \$6,181.25. Merchandise Inventory was \$4,331.96. Furniture and Fixtures \$2,148.45. Ownership of Coin Operated Machines was \$45,626.44. Ownership of Automobiles was \$2,519.21. Ownership of Land \$3,300.00. Buildings \$19,143.49. Total assets shown by this Net Worth Statement \$105,938.65.

The Accounts Payable at the end of 1949 were \$300.00. The Depreciation Reserve: for Furniture and Fixtures was \$995.23; for Coin Machines \$25,660.46; for Automobiles \$94.61; for Buildings \$3,772.90. Or a total of \$30,823.20. In addition to that there were Insurance Premiums paid \$172.69. Money spent for doctor and hospital bills of \$275.00. And State of Arizona income taxes \$12.68.

The Court: We will take the afternoon recess at this time.

Ladies and gentlemen, we will now stand at recess for fifteen minutes. During the recess please bear in mind the admonition given you. [56]

(Recess.)

The Court: You may proceed.

Q. (By Mr. Peterson): Mr. Tucker, in arriving at the computation of the tax in the years of 1946, '47, '48, and '49 what figures did you use for the computations of that tax?

(Testimony of Lloyd M. Tucker.)

A. I am looking for that, Mr. Peterson. It has gotten away from me momentarily here. Took the net worth as of the end of each year and the net worth as of the end of each succeeding year and the difference for each interim calendar year was the increase in net worth. That was determined to be the corrected income. From that he was given, Mr. Calderon was given, credit for the income which he reported.

Q. Was there any income tax reported by Mr. Calderon in 1946, '47, '48 and '49?

A. No, sir, none.

Mr. Herring: Are you talking about a return being filed or tax paid?

Mr. Flynn: Tax.

Mr. Peterson: Tax paid.

Mr. Herring: There was no question but what a return was filed?

Mr. Peterson: No, it is right here in evidence. There was no tax paid was the question I asked.

Mr. Herring: All right.

Q. (By Mr. Peterson): I hand you Government's Exhibit 7 for [57] identification and call your attention to the item \$700.00 on this exhibit, which is a bank record of the Bank of Douglas, Arizona. Was that \$700.00 in error, Mr. Tucker?

A. Sir?

Q. Was that an error?

Mr. Herring: Just a moment, please. First of all, what exhibit are you speaking about?

(Testimony of Lloyd M. Tucker.)

Mr. Peterson: I said Exhibit 7, being the Bank of Douglas records.

Mr. Herring: Okay. Now then, the exhibit is in evidence as being a verified statement of the bank records and bank accounts and purports, has been admitted to represent what it was put in for. Is your attempt to impeach the exhibit? I object to it on that ground.

Mr. Peterson: I haven't completed my examination yet.

The Court: You may proceed.

The Witness: Will you repeat the question, please?

Q. Was that an error in the compilation between your record and the record of the bank?

A. Yes. This certified copy of this ledger sheet from the Bank of Douglas shows a \$700.00 withdrawal on November 4th, 1949.

Q. Did you later deduct that from your figures, Mr. Tucker? A. Yes, sir, I did.

Q. In compiling a new tax? [58] A. Yes.

Q. Were there any other discrepancies between the bank's records and your figures, Mr. Tucker?

A. Yes, sir, there were two.

Q. What were those?

A. In the Bank of Douglas checking account for Mr. Calderon on December 31st, 1945, the ledger sheet shows a balance on December 31st, 1945, of \$688.91. And after that date there are shown one withdrawal for \$5.00 and two deposits for \$5.00, and all of them have been crossed out. They then show

(Testimony of Lloyd M. Tucker.)

a new balance of \$693.91 which is \$5.00 in excess of what I show. One of these deposits should not have been crossed out, it should have been shown there without being crossed out. So accordingly I used the figure of \$688.91 instead of the correct figure of \$693.91, made a \$5.00 error there. I had one other discrepancy in that same account. At the end of the year 1947 I show a December 31st balance of \$1,713.78 as does the bank; however on December 31st some three other checks came in later on that date and a new balance is carried out of \$1,665.64. That is the balance ' should have taken. There is \$48.24 difference there.

Q. Did you compile, and the other Internal Revenue agents, mainly yourself, compile the amount of tax which was due from Mr. Calderon for the years 1946, 1947, '48 and '49, which compilation was made from the net worth figures? [59]

A. No, I didn't make that compilation, Mr. Webb did, he determined that.

Mr. Peterson: That is all.

Cross Examination

Q. (By Mr. Herring): Mr. Tucker, have you told us all the inaccuracies there are in this Net Worth Statement?

A. Yes, as far as I know those are all there are.

Q. How about the State of Arizona income tax payment?

A. What would you like to know about it, sir?

Q. Well, it appears to me you have added that

(Testimony of Lloyd M. Tucker.)

to determine his net worth instead of subtracting it.

A. Well, I can answer your question by saying it was not added to his net worth, it was added after his net worth had been determined, as an expenditure.

Q. And it should have been deducted?

A. No, it shouldn't have been.

Q. Isn't the State of Arizona income tax, income tax paid, a deductible item?

A. It is a deductible item in determining the tax due, yes.

Q. Then why is it added in your compilation here?

A. He was given credit for that at the time his tax was computed.

Q. Now, Mr. Tucker, then the net taxable income as shown by your Net Worth Statement is wrong, isn't it? [60]

A. By this Statement you are looking at?

Q. Yes.

A. \$5.00 wrong one year and \$40 some the other year and \$700.00 in one other year.

Q. And also it would be wrong by the amount of State income tax paid? A. Yes.

Q. \$3.06 in one year, \$31.78 another year, and \$12.68 in the last year?

A. No, that is all right to have it in there.

Q. Then this Net Worth Statement you have in front of you, when you prepared it originally, was in error, wasn't it?

A. Yes, by the amounts I enumerated.

(Testimony of Lloyd M. Tucker.)

Q. Do you recall when you came in here and testified when this case was tried before?

A. Oh, yes.

Q. Do you remember at that time telling Mr. Peterson in answer to a direct question on the direct examination that that Net Worth Statement was based on absolute fact and it was not in error?

A. Frankly I don't remember using those words. If the record says I did, I don't dispute it. I do recall saying in effect it was a correct Statement.

Q. It was absolutely accurate, you said?

A. I don't remember saying that. [61]

Q. Mr. Tucker, you didn't learn then it wasn't an accurate Statement until I interrogated you on cross examination and pointed it out, did you?

A. Yes, sir, I learned it before then.

Q. Did you? A. Yes, sir.

Q. Then if you knew it was inaccurate why on direct examination before did you tell the Court and jury at the very beginning it was accurate and based on fact?

A. I believed it was accurate.

Q. When in the course of that proceeding did you find out it wasn't?

A. When Mr. Hampel from the Bank of Douglas introduced into evidence those deposit slips and withdrawal slips and bank statements.

Q. You found out you were about seven or eight hundred dollars off in 1949 and forty or fifty dollars off on several other years on the very basic figures on which this Statement is based?

(Testimony of Lloyd M. Tucker.)

A. To answer your question specifically, I found out I was \$700.00 off in one year——

Q. Yes.

A. ——and in 1945 I was off \$5.00. And this other year, I think 1947, I was off \$40 some.

Q. And all those errors you were off because you made a [62] mistake in examining bank records? A. No, sir.

Q. The bank made the mistake?

A. Are you asking me a question?

Q. Yes. Who made the mistake? You or the bank?

A. The record I examined with respect to the \$700.00 withdrawal did not incorporate that withdrawal. The other mistakes, the \$40 mistake was purely a mistake of mine, there was no question about that.

Q. The little one was and the big one wasn't a mistake of yours, is that what you intending to say?

A. I say the record I examined did not show the \$700.00 withdrawal.

Q. You mean Mr. Hampel changed it afterwards? A. I didn't say that, sir.

Q. When did you examine these records?

A. June 1950.

Q. So the balances as of the end of 1949 were there on the record, weren't they?

A. The record at the end of 1949 that I examined I am quite confident is exactly the same as I have shown on this report. However, I do know

(Testimony of Lloyd M. Tucker.)

the withdrawal was made. I merely say it was not taken into account on the bank record.

Q. In other words, you made a mistake and you are trying to cover up for it a little bit, Mr. Tucker?

A. That wasn't my statement.

Q. Let's get back to this Net Worth Statement. A Net Worth Statement must be based on several facts, mustn't it, to be accurate? Is that right?

A. Yes, that is true.

Q. And one of those facts is the Cash on Hand, isn't that true? A. Yes, that is true.

Q. For instance, at the beginning of 1945 if Mr. Calderon, you say here he had \$500.00 on hand?

A. Yes.

Q. \$500.00 cash on hand. Now, if instead of that he had \$10,000 cash on hand the whole computation on this year and succeeding years is in error, isn't it? A. Yes, I suppose so.

Q. Do you recall when you testified in this previous hearing, before we get into this Cash on Hand any deeper, that the question was asked you—

Mr. Flynn: Would you give me the page?

Mr. Herring: Page 37, bottom of the page, line 20.

"Question: Was there anything else?" by me to you.

"Answer: Yes, sir. On this schedule—" referring to your Net Worth Statement—"there is an item entitled 'State of Arizona Income Tax Paid in 1949' in the amount of \$12.68, which it is my opinion

(Testimony of Lloyd M. Tucker.)

should be deleted from the Statement [64] for the reason that the State of Arizona income tax paid are deductible expense on federal income tax returns.

"Question: And can be deducted?

"Answer: Yes, sir, should not be in the Statement."

Were those questions asked and you made those answers?

A. Yes, I remember that very clearly.

Q. Now, let's get back to this Statement. You said, as I understand it, that if the Cash on Hand item as it appears in your Net Worth Statement is in error then the whole thing is in error, that is right, isn't it?

A. It would affect it, yes. It wouldn't make any of the other items wrong or right.

Q. Just make the totals wrong all the way through? A. Yes, if the item was wrong.

Q. The total taxes, the total amounts Mr. Calderon is to be charged with would be wrong all the way through? It is true, isn't it? A. Yes, sir.

Q. Do you recall when you appeared on the trial of this case before you referred to some notes you had made to come to trial with?

A. Yes, sir.

Q. You had made those notes, I think, in relation to some other notes you had and a report you made, is that correct? A. That is true. [65]

Q. You made those typewritten notes for the purpose of refreshing your memory when you came

(Testimony of Lloyd M. Tucker.)

to trial, is that right? A. Yes, sir.

Q. Mr. Tucker, before we go any further than that, isn't it true that when you talked to Mr. Calderon about the amount of cash he had on hand that he told you he ordinarily carried around \$500.00 in his pocket? Is that right? A. That is true.

Q. And as a matter of fact, you didn't ask him how much cash he carried in his business, did you?

A. Yes, we did.

Q. You did. Do you recall asking Mr. Verdugo, who was his accountant, how much cash Mr. Calderon ordinarily had and if it wasn't true, and Mr. Verdugo told you that it was his custom, Mr. Calderon's, to have large amounts of cash in his safe? Do you recall that?

A. I am not quite sure. I remember that he said that he made fairly regular deposits at widely spaced intervals in which he deposited large amounts in his bank account, I remember that. And I remember some discussion about Mr. Calderon having a safe in his office but I don't remember the conversation I had with Mr. Verdugo about that.

Q. As a matter of fact, you related here in answer to Mr. K. Berry Peterson's question a conversation with Mr. Calderon in which you said that he had cash on hand ordinarily of about [66] \$500.00. Actually what Mr. Calderon said was he ordinarily carried that much in his pocket, didn't he? A. Yes, he said that.

Q. He didn't say anything about having \$500.00 cash on hand, that was your assumption, wasn't it?

(Testimony of Lloyd M. Tucker.)

A. That was cash on hand, was what I said.

Q. I want to hand you these typewritten notes you came to Court with last time. Are those the notes you made in preparation for this trial?

A. Yes, sir.

Mr. Herring: I offer them in evidence. May they be marked for identification first.

(Defendant's Exhibit A marked for identification.)

Mr. Herring: May the record show this Defendant's Exhibit A is the notes the witness identified he made preparatory to coming to trial the last time for the purpose of refreshing his memory. I offer those notes in evidence.

Mr. Peterson: We object to the admission of this evidence. It is merely the notes of this witness which have been jotted down, are not binding upon either himself or anybody else and it is improper cross examination.

The Court: May I see them?

Mr. Herring: Yes, sir.

(Defendant's Exhibit A handed to the Court.)

The Court: Objection overruled. It may be admitted. [67]

(Defendant's Exhibit A in evidence.)

Q. (By Mr. Herring): Now, I want to read to you, to refresh your recollection, something from this exhibit you have typed in here. First, you say "On June 27, 1950, at 3:55 p.m. in Room 213 United States Post Office Building, Douglas, Arizona, Spe-

(Testimony of Lloyd M. Tucker.)

cial Agent Lloyd M. Tucker and Deputy Collector Rex E. Webb held a conference with Edward B. Calderon. A Memorandum of Interview was prepared and signed by the Government officers following that interview and is a part of the Government's file. During that conference Mr. Calderon made the following statement.

"On January 1, 1944, he had approximately \$500.00 cash in his pocket. He believes that because it is his habit to carry about that much money in his pocket at all times. He made a deposit to his savings account at the Bank of Douglas on January 4, 1950, of approximately \$1,900.00. That sum represented money which he had accumulated during the last month or so of the year 1949'."

That is what you said in your notes of that conversation, isn't it? A. Yes, that is right.

Q. And that reminder to you which is incorporated in this typewritten statement was made from a report which you made to the Government immediately at the time of that conversation, wasn't it? [68]

A. Not exactly. It was something I prepared for my own information.

Q. But you had notes which you had taken immediately after this conversation? A. Yes.

Q. And from that you took these typewritten notes, is that correct?

A. Yes, that is right.

Q. Now, Mr. Calderon had been in the music machine business and coin-operated machine busi-

(Testimony of Lloyd M. Tucker.)

ness for a good many years before you interrogated him in 1950, hadn't he?

A. Yes, I believe that he had.

Q. You discovered in the course of your investigation he had been in the music machine business since about 1946 or a little before?

A. Yes, that is right.

Q. And that he had operated the same business in Douglas between 1941 through 1945, which were the war years, is that right?

A. Yes, that is true.

Q. You knew that? A. Oh, yes.

Q. You also in the course of your investigation determined that there was an Air Base at Douglas and business conditions were good there, between 1942 and 1946, let's say, didn't you? [69]

A. Yes. Yes, I think that is true. I didn't make an investigation of it but from hearsay I gathered things were booming down there.

Q. You also knew at the beginning of 1945, let's say, he had not been able to buy machines since 1942, had he, buy new ones, you knew that?

A. Yes, I knew that.

Q. You had investigated other coin operated businesses before, I think, haven't you?

A. Yes.

Q. So that you had every reason to know that he very probably had a good deal more cash than \$500.00 on hand at the beginning of 1946, didn't he?

A. No, Mr. Herring. No, I didn't know that.

Q. I see. Now, you had examined what is here,

(Testimony of Lloyd M. Tucker.)

Government's Exhibit 7 which is the bank account in the Bank of Douglas, the savings account, do you recall that? A. Yes, sir.

Q. Then you knew he hadn't deposited anything in that account since between June of 1943 and October 1945, didn't you?

A. I would have to look at the record. I heard it stated here on the stand today.

Q. You examined that record at the time, didn't you? A. Yes. [70]

Q. You knew that fact then, didn't you, when you talked to him? A. Yes, I knew it then.

Q. You had examined his other bank accounts?

A. As far as I know I examined all of them.

Q. Knowing that he had not deposited any money in his savings account in that period and that his deposits in his other accounts were about the same as they had always been, weren't they?

A. Yes, I believe so.

Q. You also knew he worked at the smelter during 1943, didn't you? A. Yes.

Q. And you knew he had rental property in Douglas? A. Yes.

Q. And where then did you suppose he put his money he got from operating these coin machines and from his businesses if he didn't put it in his savings account where he put it before?

A. He spent five thousand dollars of it for bonds. He put four thousand dollars in his savings account. And he bought eight thousand dollars worth of machines. And he had land and buildings

(Testimony of Lloyd M. Tucker.)

worth ten thousand dollars at the end of 1945?

Q. He bought the bonds in 1944?

A. You were talking about this period during the war. Yes, [71] he bought some of them prior to 1943 or in 1943, at least most of them in 1944.

Q. That is right. Actually, you don't know how much cash—that \$500.00 is just an assumption, isn't it?

A. It is based on what he told me.

Q. You didn't even ask him how much money he had at home in the safe?

A. We discussed this cash item at some length.

Q. Can you under oath say that you asked him how much money he ordinarily kept in his safe and had in his safe on January 1, 1945?

A. No, I can't say I asked him that question.

Q. In fact, these notes here on this exhibit is just about all he said about that, isn't it?

A. No, that is not quite right. This item of cash in pocket, as I said before, is terminology. I didn't interpret he carried five hundred in his pocket at all times. It is obvious that he had more cash at times because his savings account shows he deposited one thousand or two thousand or more at a time, so it is evident he had it the day before he deposited it and probably for days or weeks before. Of course at times he had more cash than that.

Q. It is entirely possible, from your knowledge of the circumstances in Douglas and from your knowledge of the music machine and coin machine business and from your investigation [72] of this

(Testimony of Lloyd M. Tucker.)

thing, that Mr. Calderon had as much as ten thousand dollars in his possession on January 1, 1945, isn't it? It is possible?

A. Well, it is possible he could or could not have had it. I can't answer the question, Mr. Herring.

Q. You don't know?

A. All I know is what he told me he customarily had.

Q. In his pocket, five hundred dollars?

A. He said in his pocket.

Q. Didn't Mr. Verdugo tell you Mr. Calderon kept cash in his safe?

A. You asked me that question before and I am trying to remember. I can't be sure. I seem to recall some discussion about it.

Q. Do you recall at the previous trial this question was asked and you made this answer—bottom of page 75 and top of page 76:

“Question: Didn't Mr. Verdugo tell you that Mr. Calderon kept cash in his safe?

“Answer: Yes, Mr. Calderon told me that too.”

That question was asked and you made that answer?

A. Oh, yes, that is my answer if the record shows that. My recollection was evidently better then.

Q. Yet each year here on this Statement you put in Mr. Calderon had cash in his pocket, five hundred dollars, no more, [73] no less, don't you?

A. That is what I said.

(Testimony of Lloyd M. Tucker.)

Q. Now, also you had Mr. Calderon sign a Net Worth Statement, didn't you? A. Yes, sir.

Q. As a matter of fact, at the time he signed it he talked to you and he asked his accountant about it, Mr. Verdugo, then he turned to you and said, "Is that right?" and you said "Yes," and he signed it, isn't that right?

A. To some extent. He called Mr. Verdugo over and he asked him if he thought that statement were correct; Mr. Verdugo read it and he said, "I don't know about all the figures on it but it is a commonly used method of determining income and it looks all right to me."

Q. So you told him the figures in them were checked and he signed it?

A. I would like to preface that by saying we spent most of the day with him and went over with him a good deal of the source of material from which that statement was compiled and checked it. In fact, he furnished us with a good many of the invoices that relate to the purchase of that machinery.

Q. He cooperated with you fully?

A. Yes. He furnished me with a good deal of information.

Q. When you went down to Douglas and started this investigation Mr. Calderon was very anxious to please you and to do [74] anything that would assist you in this investigation?

Mr. Peterson: I don't think that has anything to do with this case.

(Testimony of Lloyd M. Tucker.)

Mr. Herring: Of course, your Honor, it goes to intent. It is the very basis of the case.

The Court: He may answer if he knows.

A. Your question was, was he anxious?

Q. He cooperated with you in every way and got you any information you requested?

A. Yes, anything we asked him for—I wouldn't say anything we asked him for, we asked him for all his invoices and he didn't produce them. He produced some. They may or may not be all he had. He did produce invoices. He produced his paid checks.

Q. And he made both himself and Mr. Verdugo available to you anytime you wanted to talk to him, didn't he?

A. Yes, that is true.

Q. He exhibited the greatest cooperation on anything you wanted him to do, didn't he?

A. Yes, I would say he was cooperative.

Q. Now then, I noticed in testifying about the various items that go to make up this Net Worth Statement that you didn't ever refer to Mr. Calderon's books as a source of material here. That was because those books were so fragmentary as to be almost non-existent, weren't they? [75]

A. I think I referred to it in one instance here with respect to the inventories.

Q. But other than that you found many instances where invoices had not been entered, didn't you?

A. Oh, yes. Yes.

Q. You found other instances in which invoices had been paid and never credited properly?

(Testimony of Lloyd M. Tucker.)

A. I don't recall about that.

Q. In fact, the books themselves were incomplete, weren't they, very incomplete?

Mr. Peterson: Your Honor, I don't think this is a matter of defense. It is a matter he didn't keep books. The law provides he should keep books. It is no defense that he didn't keep them.

The Court: Your objection is overruled. It is something that this witness knows in his investigation. He may answer.

A. The books, for a small business, were set up in an acceptable form. They provided for purchases and income, purchases of capital equipment. There was no fault to find with that. There were many omissions in those books. A good deal of these coin operated machines were not recorded in the books.

Q. In other words, the keeping of the books, there was some sort of lag or difficulty between the original sources of information and the books themselves? In other words, they [76] didn't jibe very well?

A. That is true.

Q. And sometimes the books were inaccurate even as far as they went?

A. There were, as I recall, there were no mathematical errors. There may have been some small ones. The thing was handled right. But there were lots of things left out.

Q. Lots of things left out. You don't claim here that there was any fraud in any deductions Mr. Calderon claimed, do you, that the Government later disallowed or you claim were not allowable?

(Testimony of Lloyd M. Tucker.)

A. No, I believe not.

Q. Is it just a matter in one or two instances he claimed deductions which you decided weren't allowable under the rules of the Treasury Department, is that it?

A. Are you referring to the whole matter?

Q. Yes. I am trying to find out—he is not charged here, you don't claim he attempted any fraud by any deductions or anything he put in?

A. No, not by false deductions.

Q. How many conversations did you have with Mr. Calderon? A. About four.

Q. In how many of them was Mr. Verdugo present? A. At two.

Q. So you had two conversations — was Mr. Webb present all [77] the time?

A. He was present at three of them.

Q. And you had one conversation then just between you and Mr. Calderon?

A. No, Mr. Verdugo was there.

Q. Mr. Verdugo was there that time?

A. Yes.

Q. At any one of these conversations did you have Mr. Calderon sign a statement, written statement? A. Yes, two statements.

Q. Now I notice from this Net Worth Statement you prepared here that in 1946 you say Mr. Calderon increased or bought his machine equipment or increased it about sixteen thousand dollars, didn't he? A. Yes, sir.

Q. How much did he increase his Notes or Ac-

(Testimony of Lloyd M. Tucker.)

counts Payable during that same time?

A. By one thousand twenty-seven dollars and forty-four cents.

Q. So that left fifteen thousand dollars in cash he got from somewhere, didn't it, approximately?

A. About, yes, about fifteen thousand.

Q. Yet at the beginning of that year you show he only had five hundred dollars in cash?

A. Yes, sir.

Q. Where did the money come from? [78]

A. Some of the purchases were paid for in cash and some were paid for on his checking account.

Q. Yes. How many were paid for from his checking account?

A. I can't tell you by number without looking.

Q. What I am getting at, Mr. Tucker, the cash items were paid for out of cash, much of which he must have had on hand at the beginning of 1946, weren't they?

A. You are asking me to assume that they were?

Q. Yes.

A. The examination I made does not indicate that would be the case.

Q. Let's stop a minute and see. Let me recall something to you. We agreed a while ago for 1942 to 1945 were the good business years in Douglas, do you recall?

A. Yes, I guess we agreed on that. I wasn't there but I heard that.

Q. We further agreed that he didn't make any deposits in his savings account from June 1943 to

(Testimony of Lloyd M. Tucker.)

October 1945, remember? A. Yes, sir.

Q. We also agreed during the period before 1946 for a period of about three and a half years - he was unable to buy any machines, remember?

A. Yes, sir.

Q. Now, then, if he paid out during 1946 about fifteen thousand dollars, either out of his checking account or by [79] cash for new equipment, he must have had more than five hundred dollars in cash when he went into the year, mustn't he?

Mr. Peterson: That is argumentative. It has been asked and re-asked, purely argument.

The Court: He may answer if he knows.

A. Will you restate the question?

(Last question read.)

A. No, I don't think that follows, Mr. Herring.

Q. Isn't it a reasonable assumption that is so?

A. I don't think it is, if you permit me to continue.

Q. Your answer is it isn't a reasonable assumption?
A. No.

Q. Do you have a record of coin operated machine purchases in 1946?

A. Yes, sir, I think I have another copy of that. Do you want me to refer to that?

Q. Would you get it, yes.

(Witness refers to document.)

Q. Do you have it before you now?

A. Yes, sir.

Q. He paid \$1,195.00 by check on February 6?

A. Yes, sir.

(Testimony of Lloyd M. Tucker.)

Q. Then on March 22 he paid \$50.00 cash deposit; on March 28th he paid—we will just pick up the cash payments here— [80] on April 15 he paid \$180.00 in cash; on May 21 he paid \$50.00 by cash; on July 8 he paid \$50.00 by cash; on August 7 he paid \$100.00 by cash; and the balance of \$1,660.00 by cash payable to the Valley National Bank by buying a sight draft. On September 4th he paid \$1,965.54 in cash; on September 13th he paid another \$50.00 by cash; on October 7 he paid \$50.00 by cash; and an additional \$199.20 by sight draft to the Valley Bank in cash; on October 24 he paid \$149.00 in cash; on November 26th another \$50.00 by cash, and on November 26 another \$50.00 by cash; on December 13 another \$60.00 by cash; on December 26th \$203.75 by cash. All those are correct, aren't they?

A. All except the last one, that was paid by cash on January 7th.

Q. January 7, 1947?

A. Yes, you are right.

Q. During this same period of time he made regular deposits of cash in his checking account?

A. Yes, sir.

Q. And in 1946 he made regular deposits of cash in his savings account?

A. Well, yes, he made some.

Q. Yes. On December 13th there was a check drawn to the Wolf Sales Company of \$1,752.10, is that correct?

A. Referring to 1946? [81]

Q. Yes. A. December 13th, \$1,752.10.

(Testimony of Lloyd M. Tucker.)

Q. Yes. Is that right? A. Yes.

Q. Read that amount again. A. \$1,752.10.

Q. Now, would you consult Government's Exhibit 9, being the working account in the Bank of Douglas which he used for his business, and look down there on the same day, December 13. Now, do you find a deposit there of any amount similar to that?

A. On this page, December 13th. Do I find a deposit? Yes, I do.

Q. How much is it? A. \$1,723.82.

Q. Do you find this check also reflected in that account? A. Yes, sir.

Q. On the same day? A. Yes, sir.

Q. How much is it? A. \$1,752.10.

Q. So from that it is reasonable to presume he put cash in to cover this and drew a check for it, isn't it?

A. Yes, that is evidently what he did because prior to that deposit he only had a balance of \$535.00. [82]

Q. That is right. So actually you don't know how much cash he had on hand at the beginning of any one of these years, do you, Mr. Tucker?

A. All I know, Mr. Herring—

Q. Just answer the question, please.

A. Did you ask me if I knew of my own knowledge?

Q. That is right.

A. Why, of course I don't know.

Q. Did you ever find any entries in Mr. Cal-

(Testimony of Lloyd M. Tucker.)

deron's records or his books, particularly his books, did you ever find any entries made by Mr. Calderon himself?

A. Yes, for some of those earlier years I believe some of them were kept by him. I am not—

Q. Not positive about that?

A. I recall looking at records that were kept by him but I don't recall they were in the years 1946—no, not for the years 1946 to 1949, I recall the books—

Q. They were all made by Mr. Verdugo?

A. Yes, that is right.

Mr. Herring: I think that is all, your Honor.

Mr. Petersor: That is all. I would like permission to return Mr. Tucker to the stand at a later matter in this trial.

The Court: To recall him later?

Mr. Peterson: Yes, sir. [83]

The Court: Very well.

It is now approximately 4:30. At this time we will recess until tomorrow at 10:00 o'clock. Please bear in mind the admonition previously given you.

(Whereupon a recess was taken at 4:30 o'clock p.m. on October 21, 1952, until 10 o'clock a.m. October 22, 1952.)

The Court: Call your next witness.

Mr. Flynn: Mr. Webb.

REX E. WEBB

recalled as a witness, having been previously sworn, testified as follows:

Direct Examination

Q. (By Mr. Flynn): You were on the stand yesterday? A. I was.

Q. I want to show you Government's Exhibit 7 in evidence, Mr. Webb. You have examined that before, have you not? A. I have.

Q. I will call your attention to the last page, this entry here under date of November 4, 1949, of \$700.00. What does that represent there, what does it reflect, withdrawal or deposit?

A. On this statement it would reflect withdrawal.

Q. I will ask you if you ever examined the defendant's passbook covering this same account that is reflected on [84] Government's Exhibit 7.

A. I did.

Q. Where did you get that passbook?

A. From the defendant.

Q. And did you check the entries in that passbook as against the entries on this exhibit 7?

A. I did.

Q. What did you do with the passbook after you got through with it?

A. I returned it to the taxpayer.

Q. As far as you know it is still in his possession? A. Yes, it is.

Q. I will ask you, in checking this passbook against the entries on Exhibit 7 if you found in

(Testimony of Rex E. Webb.)

that passbook any entry reflecting the \$700 withdrawal on this exhibit.

A. There was no entry showing that withdrawal in the passbook.

Q. As far as entries showing deposits in the account, they were all in the passbook?

A. They were all entered.

Q. Mr. Webb, I will ask you if you have made a compilation of the taxes which Mr. and Mrs. Calderon should have paid under the figures represented by the Net Worth Statement prepared and testified to by Mr. Tucker.

A. I did, I made a computation—— [85]

Mr. Herring: Just a moment. I object to that on the ground it is irrelevant, incompetent and immaterial. The figures compiled by Mr. Tucker have been shown by his own testimony to be inaccurate and is not to be the basis for any computation or compilation, therefore it makes no difference if Mr. Webb made a computation of that matter or not.

The Court: The objection will be overruled. Answer the question yes or no. A. Yes.

Q. Based on the figures testified to by Mr. Tucker as to the calendar year 1946, of the income of Mr. and Mrs. Calderon, will you state what the result of your compilation was and what the amount of tax that would be due on income as represented by those figures?

Mr. Herring: Now, your Honor, we make the objection that this is calling for a conclusion from this witness based on something first of all not in

(Testimony of Rex E. Webb.)

evidence, second, based on something which has not been established by the facts to be the basis for any computation, and third as being completely irrelevant in any event. The point being—we have some law we would like to discuss with your Honor on that point—this Net Worth Statement as Mr. Tucker said is worthless if the Cash on Hand is not accurate. Mr. Tucker himself said he didn't know the Cash on Hand and the only entry he made was the cash in the pocket of the individual. He also admitted [86] he was told there was cash in the safe and that he knew it was necessary in the operation of this business that large amounts of cash be kept on hand. Under those circumstances I think it is entirely improper for this witness to be asked to answer any questions such as this.

The Court: I think the witness can make a compilation. I think he should give us the figures which he takes from Mr. Tucker's testimony so we may know.

Mr. Flynn: We will take those from year to year, your Honor, starting out with the year 1946. And there has been no question about the testimony of Mr. Tucker as to those figures.

Mr. Herring: The question was addressed, as I understood it, to the totals, was it not, Mr. Flynn, for each year?

Mr. Flynn: I am asking him to base his compilation upon the Net Worth Statement made by Mr. Tucker's testimony, established by his testimony, from the bank records here and take those

(Testimony of Rex E. Webb.)

figures and make a compilation of them of the amount of taxes that would be due on those figures, that is all.

The Court: Mr. Tucker in his testimony referred to some figures he had in the Statement originally which he corrected.

Mr. Flynn: I think I would take care of that in the examination if they would just give me time, your Honor.

The Court: I think the present question, though, asked for the amount. I think we ought to do it first by setting out the figures which he used as the basis for his [87] computation.

Mr. Flynn: I will have him do that.

The Court: Very well.

Q. (By Mr. Flynn): First, will you state what figures for the year 1946, what figures you based your compilation on.

A. I originally based it on the original figures—

Q. I mean now for the year 1946.

A. For 1946.

Q. Yes.

A. It was based on the net worth gain statement compiled by Mr. Tucker and myself.

Q. Do you have the amount of that?

A. Yes, sir. The amount of tax due, seven thousand—

Q. I mean the figure you based your tax on.

A. \$24,855.49.

Q. What would be the amount of tax from your figure? A. \$7,352.12.

(Testimony of Rex E. Webb.)

Mr. Herring: Just a moment, please. I ask the answer be stricken until I have had a chance to make my objection. Your Honor, the point of my objection is, first of all, that Mr. Tucker's Net Worth Statement, if it were offered as a Net Worth Statement, would not under the rules of this Circuit Court be admissible. Based on that assumption I say that any testimony this man might give as to the result of his computation of tax in relation to Mr. Tucker's figures is also not [88] admissible because Mr. Tucker's own statement was his Net Worth Statement would be no good if the Cash on Hand were inaccurate. That his own testimony developed that the Cash on Hand was inaccurate, therefore this man is testifying from something which is inaccurate, something which could not be admitted in evidence and his answer is not admissible. And we have substantial authority to that effect.

The Court: I think I am familiar with the cases you have in mind. I think the difference in it is your view of Mr. Tucker's testimony. I realize what you are getting at in the objection. The objection will be overruled. However I would ask counsel to have the witness instead of lumping the figure give us the items as Mr. Tucker did in the Net Worth Statement.

Mr. Flynn: The purpose of this, your Honor—I thought we went through all of that with Mr. Tucker and itemized them and testified to his final

(Testimony of Rex E. Webb.)

result. That is all this man's figures are based on, are the final result.

The Court: Mr. Tucker, though, testified he used certain figures in the Net Worth Statement.

Mr. Flynn: That is right.

The Court: That he found out, for instance, that he had a \$700 mistake.

Mr. Flynn: We are on 1946 now, there is no question about any mistake. [89]

Mr. Richey: There is certainly a question about a mistake in 1946.

Mr. Flynn: Well, he is talking about Cash on Hand.

Mr. Richey: No, I am not talking about Cash on Hand. They show there was an error in the Bank of Douglas checking account December 31st, 1945, which was admitted by Mr. Tucker.

Mr. Peterson: How much?

Mr. Richey: I don't know how much it is. That is not my problem. All I say is the gain quoted here of \$24,855.45 is incorrect and this witness has testified himself that was the figure he used to compute the tax on. Mr. Tucker has already stated that figure is incorrect. And I will be glad to go back into the record yesterday—that that figure is incorrect. It is not up to me to determine how far it is incorrect but it is incorrect.

The Court: That was my only purpose in suggesting it be done in the way in which I indicated so it be clear just what figures are Mr. Tucker's this witness is going to use.

(Testimony of Rex E. Webb.)

Mr. Flynn: It was my purpose, your Honor, he is going to use the figure Mr. Tucker testified to, this \$5.00 discrepancy, then we are going to show how much difference that would make in the tax.

The Court: In other words, you are going to do it in reverse?

Mr. Flynn: Yes. [90]

The Court: Well, subject to your doing that you may proceed.

The Witness: The question, please.

Q. (By Mr. Flynn): The question is based on the net worth figures Mr. Tucker testified to which you stated as \$24,855.49. Then the question is, how much tax would there be due on that amount of money by Mr. Calderon and his wife?

A. \$7,352.12.

Q. Now then, Mr. Webb, assuming that in the statement of the bank which was the basis of Mr. Tucker's testimony, statement of the amount in the bank as he based his figures on, there was a \$5.00 error, how much difference would that make in the corrected income and in the tax?

A. Approximately \$1.00, more or less.

Q. Now then, did you also make a compilation of the amount of tax that would be due by Mr. Calderon and his wife for the calendar year 1947, based upon the net worth figures testified to by Mr. Tucker for that year? A. I did.

Q. What were the figures you based your tax on? A. \$11,056.82.

Q. And how much tax would there be due by

(Testimony of Rex E. Webb.)

Mr. and Mrs. Calderon on those figures?

A. \$1,450.70.

Q. Now, for the year 1948, Mr. Webb, did you make a similar [91] compilation based on the net worth figures testified to by Mr. Tucker?

A. I did.

Mr. Herring: Mr. Webb, just a moment. May I make the continuing objection, your Honor. I object to the introduction of all this testimony as being based on something not properly in evidence.

The Court: Yes, the record may show a continuing objection to all the testimony of this witness.

Q. Do you have in your figures, Mr. Webb, there was another error of around forty or forty-five dollars? What calendar year would that involve?

A. Would that be on a checking account or savings account?

Q. Checking account.

A. That is a part of Mr. Tucker's file, but I believe it is on the year 1947, possibly 1948.

Q. We have got to know. Now, you have just testified, Mr. Webb, for your figures in the calendar year 1947. Assuming that there was an error of \$48.24, in other words, there would be that much less than the figures that Mr. Tucker testified to, what effect and in what amount would that affect the tax for that year?

A. Approximately \$10.00.

Q. Now, you also figured the tax for the year

(Testimony of Rex E. Webb.)

1948, based on Mr. Tucker's Net Worth Statement and the testimony in this [92] case including the bank records, and what was the amount you based your tax on for that year? A. \$6,874.43.

Q. What tax would be due by Mr. and Mrs. Calderon for that year on those figures?

A. \$230.24.

Q. Now, you made similar calculations for the year 1949, is that correct? A. Correct.

Q. And in figuring the tax due for the year 1949 did you take into consideration this \$700 item you have testified to?

A. I made the proper adjustment.

Q. What was the amount you based your tax on for the year 1949, taking into consideration this \$700 item? A. \$19,506.73.

Q. What would Mr. and Mrs. Calderon's tax be for that year on that amount? A. \$2,645.78.

Q. Now in figuring those taxes did you take into consideration or comparison the dependents and so forth that were claimed by Mr. and Mrs. Calderon in their returns made for those years?

A. Oh, yes, they were given all consideration for all deductions any taxpayer would be entitled to.

Q. Now, you took part in the investigation in this case, [93] didn't you, Mr. Webb?

A. I did.

Q. From practically the start of the investigation? A. I did.

Q. And in that investigation you talked with Mr. Calderon on different occasions? A. Yes, sir.

(Testimony of Rex E. Webb.)

Q. And when you first talked with him, Mr. Webb, what did you advise Mr. Calderon about his rights?

A. I told him that he had the privilege of co-operating or not cooperating, that he had the right to obtain counsel and that whatever he did made no difference with me in this investigation, I would go ahead with it, but he did have rights of counsel and he didn't necessarily have to cooperate with me.

Mr. Herring: Your Honor, in order to keep me from jumping up all the time could Mr. Flynn be admonished to lay the proper foundation for these conversations?

The Court: When you have to make an objection, Mr. Herring, perhaps you had better make it.

Mr. Herring: All right. I make objection to the last statement on the ground the proper foundation was not laid.

The Court: Fix the time and place.

Mr. Flynn: I will.

(Government's Exhibit 11 marked for identification.) [94]

Q. Where was this first conversation had with Mr. Calderon?

A. In our office on the second floor of the Post Office Building at Douglas, Arizona.

Q. Who was present?

A. I believe no one at that time except Mr. Calderon and myself.

Q. That was the time you advised him as you have already testified? A - Yes.

(Testimony of Rex E. Webb.)

Q. I show you now Government's Exhibit 11 for identification and ask you if you have seen it before. A. I have.

Q. Calling your attention to the signatures on this exhibit, do you know who signed that? Were you present when it was signed?

A. I was present.

Q. Who signed it? A. Edward Calderon.

Q. Who else was present when that was signed?

A. Mr. Tucker, Special Agent.

Q. And yourself? A. And myself.

Q. And where did that take place and when?

A. It was on the second floor of the Post Office Building in Douglas and it was, I believe, the 2nd day of August, 1950, [95] is right.

Q. Before the defendant signed this exhibit did he read it in your presence? A. He read it.

Q. Who wrote up this exhibit?

A. Mr. Tucker wrote that on the typewriter.

Q. Who was present when he did that?

A. Mr. Calderon and myself.

Q. Before he wrote it up was all the contents in there, was the matter discussed with Mr. Calderon? A. Had been discussed for hours.

Mr. Flynn: We offer it in evidence.

Mr. Herring: Your Honor, to which we object on the ground the proper foundation has not been laid at this time to the introduction of a statement of this kind.

The Court: Objection overruled. It may be admitted.

(Testimony of Rex E. Webb.)

Mr. Herring: Your Honor, in order to make my record I would like to renew my objection and make it on the ground that the proper foundation has not been laid, that this statement purports to be on its face some sort of an admission of facts, that until the corpus delicti has been proven such admission of facts or such instrument is not admissible; that there is no basis for the Net Worth Statement given, no proper basis, there is no proper basis for the introduction of any evidence at all from Mr. Calderon. That the Government [96] must make its case first, at least the corpus delicti in the case, by independent evidence in such a case as this before such a statement as this could be admitted.

The Court: The further objection will be overruled also.

(Government's Exhibit 11 in evidence.)

Mr. Flynn: At this time I would like to read to the jury this exhibit.

The Court: Has it been marked in evidence?

Mr. Flynn: Yes, as Government's Exhibit 11 in evidence.

I am reading to the jury Government's Exhibit 11 in evidence.

"United States of America,

"District of Arizona—ss.

"Affidavit.

"I, Edward B. Calderon, after being duly sworn upon oath, depose and say:

"I am a citizen of the United States and a resident of Douglas, Arizona. I am engaged in the oper-

(Testimony of Rex E. Webb.)

ation of the Coronado Cafe and Eddie's Automatic Music Company, both located in Douglas, Arizona. I am married and live with my wife and seven dependent children and my mother and father in a house which is owned by my father. Since 1939 I have been engaged with the operation of coin-operated amusement devices in and about Douglas, Arizona.

"During the years 1943 to 1949, inclusive, I have not [97] received any gifts, inheritances, or received the proceeds of any insurance. Since about the year 1941 I have given my wife each month in cash the sum of \$250.00 to operate the household. In October, 1946, my family and myself took a trip to Los Angeles, California, and were gone from Douglas approximately sixteen days. I estimate that I spent \$400.00 in cash on that vacation. In October, 1947, my wife, father, and myself took a trip by train to Mexico City. In addition to the train fare and pullman berths I bought approximately \$200.00 in Travelers Checks which I spent on the trip.

"It has been my practice for the past several years to regularly deposit in my checking account sufficient receipts from my businesses to pay my current bills. Excess receipts I accumulated in my safe for short periods of time and then deposited such moneys in my savings account.

"During the years 1944 to 1949, inclusive, all of the income which I failed to report on the Income Tax returns filed by me for each of those

(Testimony of Rex E. Webb.)

years came from an understatement of receipts from coin-operated amusement devices. None of such unreported income came from the operation of my music store or from the Coronade Cafe. Receipts from those business were reported correctly. The understatement of income from coin-operated amusement devices came about in part by entering the receipt of money from various locations on memorandum paper which later was not transferred to permanent receipts, [98] and therefore did not taken into account in the income reported from coin-operated machines. The understatement of such income also came about from the understatement on my location receipt books of money taken from coin machines. This happened in about thirteen of my locations. I did this because the proprietors of such locations requested me to understate the amount taken from the coin machines in my receipt books so that they would not have to report the full amount of their share. This understatement of income from my coin-operated machines also occurred by a certain number of receipt books being lost or misplaced by myself or my employees. Therefore, the receipts entered in those books were not turned in to my bookkeeper.

"I have carefully read the foregoing statement contained on two pages and it is the truth to the best of my knowledge. This statement has been given freely and voluntarily and I have been advised of my Constitutional rights. I have not been threat-

(Testimony of Rex E. Webb.)

ened or offered any promises or promises of reward in return therefor.

"Signed: Edward B. Calderon.

"Subscribed and sworn to before me this 2nd day of August, 1950, at Douglas, Arizona.

"Lloyd M. Tucker,

"Special Agent.

"Witness: Rex E. Webb, [99]

"Deputy Collector."

Mr. Flynn: That is all.

Cross Examination

Q. (By Mr. Richey): Mr. Webb, will you refer back now to the papers you brought in connection with the compilation of the income tax?

A. Yes, sir.

Q. Tell us what credits or deductions you allowed Mr. Calderon, including the corrections that are made on the Net Worth Statement by Mr. Tucker. What deductions did you allow Mr. Calderon for the year 1946?

A. His personal exemption, that of his wife, and that of five children. Mr. Calderon originally filed his return by taking advantage of the optional standard deduction in lieu of declaring such things as contributions, State Income tax, State sales tax; he took the optional standard deduction allowed by the Government. And in making that computation I allowed him on that same basis, which is a blanket coverage—it is approximately ten percent of the taxable net and it is a blanket coverage covering

(Testimony of Rex E. Webb.)

what we call personal deductions which would ordinarily appear on page three of the return.

Q. And also the \$5.00 discrepancy in the bank account, the checking account in the Bank of Douglas?

A. No, I made no adjustment on that. I did state there would be a dollar, approximately a dollar, difference in the [100] liability as I have stated it, it would be about a dollar less than I had stated.

Q. So the only error in your compilation, then, is that on that \$5.00?

A. Right.

Q. I want to be perfectly fair with you, Mr. Webb, that is the only error?

A. That is the only error I know of, yes, sir.

Q. How long have you been with the Internal Revenue Department, Mr. Webb?

A. Twelve years this month.

Q. I believe you are a Deputy Collector?

A. Yes, sir.

Q. You spent considerable time in computing income tax statements, assisting taxpayers and so forth?

A. It is a part of my job.

Q. Also checking taxpayers' returns?

A. That is part of my job.

Q. For the year 1947 what was the net taxable income figure you used for the year 1947?

A. \$11,056.82.

Q. That is the only compilation you have made, the only compilation from which you have testified was the tax based on that figure?

(Testimony of Rex E. Webb.)

A. That was what I testified to, the tax based on that [101] figure.

Q. The taxpayer received no other credit?

A. He received benefits of optional standard deduction, his personal exemption, that of his wife, his children, and the optional standard deduction which he chose to take in lieu of a few personal deductions which he might have listed.

Q. Did you make any adjustments in relation to the adjustments on the Net Worth Statement?

A. No. I made mention of the fact the difference of approximately forty or forty-five dollars which would have ordinarily appeared in 1948 and increased the tax to what it would have decreased in 1947, to the extent of about ten dollars, approximately.

Q. In 1948 what figure did you use?

A. \$6,874.43.

Q. And in 1949? A. \$19,506.73.

Q. Now that is not the figure that appears on the Net Worth Statement?

A. After making the \$700.00 adjustment it is the figure.

Q. Mr. Webb, I said it is not the figure that appears on the Net Worth Statement. I realize you made the adjustment, but that is not the figure that appears on the Net Worth Statement.

A. That is right, you are right. [102]

Q. What is the figure that appears on the Net Worth Statement? A. \$20,206.73.

Q. Now, you are very familiar, in fact, you

(Testimony of Rex E. Webb.)

helped to make this Net Worth Statement, didn't you? A. I did.

Q. The Net Worth Statement is a thing used for the basis of the compilations to which you have testified this morning?

A. Net worth gain each year.

Q. Yes. You used this Net Worth Statement?

A. The figures I testified to, I used the Net Worth Statement with the exception of 1949, I made the adjustment of \$700.00 which we know was drawn from the bank but the records of the bank didn't show it at the time they were examined.

Q. What was that?

A. I said I made this Statement from the figures as shown in the Net Worth Statement with the exception of the year 1949, I reduced the income—

Q. No, complete what you said before. I think you said that wasn't reflected in the records of the bank.

A. It didn't appear on the bank records when the correction was made.

Q. I thought a little while ago you explained the discrepancy existed because you used Mr. Calderon's passbook?

A. No. I had made a transcription from Mr. Calderon's [103] passbook and Mr. Tucker made one from the bank records and we compared the two records and they coincided and in neither case was there a \$700.00 withdrawal shown.

Q. Mr. Tucker is the one, then, that examined this?

(Testimony of Rex E. Webb.)

A. On the 9th of June or before, before I had contacted Mr. Calderon I had checked his bank records. I made no transcript, I merely pulled totals to check the amounts he had in cash and later Mr. Tucker went down and made a complete check and transcription of that bank record.

Q. Yet you are telling me you know this bank record wasn't complete at the time that record was taken, at the time this record was investigated?

A. My total on these bank accounts as of the end of 1949 were the same which I had taken from the bank records prior to contacting the defendant, were the same as Mr. Tucker had taken on his transcript.

Q. You took what the bank record reflected because the bank record wasn't complete at that time, that is what you are trying to explain to us, isn't it?

A. I took originally the transcription Mr. Tucker made of the bank record. We knew he had bought a piece of property involving \$700.00—

Q. Excuse me, Mr. Webb. All I am talking about is just this—

A. Of course originally I took the bank records as Mr. [104] Tucker transcribed them.

Q. As Mr. Tucker transcribed them. So you don't know, then, whether the bank records were complete at that time or not, do you?

A. His balance as of December 31, 1949, was the same as the balance I pulled off the bank record on the same day at a previous date.

Q. When did he examine the bank records?

(Testimony of Rex E. Webb.)

A. It was after June the 9th.

Q. In 1950? A. 1950, yes, sir.

Q. We are talking about the bank record as it appeared on December 31, 1949, or six months before, aren't we? A. That is right.

Q. And that bank record reflected at the time you looked at it \$18,000 some odd dollars, didn't it?

A. That is correct.

Q. Will you show me anywhere in that account where there is an eighteen thousand dollar balance on it, anytime during the entire history of that record?

A. There is no place a \$18,000 balance appears here.

Q. Where did you get it now? You said you got it off that record?

A. I got it from Mr. Calderon's passbook.

Q. Also you said the bank record reflected the same thing? [105]

A. Prior to interviewing Mr. Calderon the first time I had pulled the beginning and closing amounts on deposit and it reflected \$18,100 and some dollars.

Q. That is the record you examined you are holding right there?

A. I have no way of identifying it. I have no way of saying this is the record I examined.

Q. You heard Mr. Tucker testify to that record, didn't you, and say that last sheet, that second sheet, appeared just the same then as it does now?

A. I didn't hear Mr. Tucker say that.

(Testimony of Rex E. Webb.)

Q. You didn't hear him say that? Did you hear Mr. Hampel say it?

A. I heard Mr. Hampel say that this was a certification of the original as it appears in their records.

Q. We asked him "just as it appears?" And he said "yes," didn't he?

A. Something to that effect, yes.

Q. Will you show us on that record where you got a figure in excess of \$18,000, on that record anytime?

A. In excess of \$17,000?

Q. In excess of \$18,000.

A. There is no figure that appears here in excess of \$18,000.

Q. On the Net Worth Statement the figure that was supposed [106] to have been taken from that record is in excess of \$18,000, isn't it?

A. Yes, there is a difference of \$700.

Q. Going back to this Net Worth Statement, look at the opening year, actually the third year in the Net Worth Statement but for our purposes the opening year, 1945. If any one figure was changed in that entire column it would affect every year thereafter, wouldn't it? This is just a general accounting question.

A. Of course. Give me the question again, please.

Q. If any figure in the column under December 31, 1945, assets or liabilities either one, or the total, were changed in this Net Worth Statement, it would

(Testimony of Rex E. Webb.)

change the total for every year thereafter, wouldn't it?

A. Unless the same item and the same figure on that item was constantly used in each of those succeeding years it would.

Q. They are all used, aren't they?

A. Yes.

Q. It is accumulative, a Net Worth Statement is cumulative, that is right, isn't it?

A. That is true.

Q. The minute we start, no matter where we start, it changes the accumulation each year?

A. As an example, if you take an asset into account at a [107] certain value as of December 31, 1945, and you have used the same value on that asset throughout and then you discover there has been an error on the value placed on that asset, you would use the same new value throughout all these years and it would not affect the net worth gain as was shown by the Statement.

Q. All right. However, in the compilation of these tax returns you told us you made, you said no, these are just the deductions you gave this man, you said you hadn't given him another deduction, you had been doing this for years. You knew on this Net Worth Statement when you changed this figure of \$688.91 that affected the balance continually through this Net Worth Statement?

A. What item is that?

Q. The Bank of Douglas checking account.

A. Five dollar differential?

(Testimony of Rex E. Webb.)

Q. That is right.

A. I qualified my statement at the time I made it that by recomputation that five dollars would reflect about one dollar less tax.

Q. However, that reflects in the ensuing years, it doesn't just go to one year? A. No.

Q. That either increases or decreases the balance in the succeeding years? [108]

A. No, it doesn't change the balance as of the last day of that year because you start out the following year with a correct balance as of the last day of that year. Each year is a period by itself.

Q. Then I believe you stated you gave him no credit, this is talking about the Net Worth Statement, not your standard deductions. Included in the Net Worth Statement there is added in back to his income his State Income tax paid?

A. That is proper.

Q. That is proper? A. That is proper.

Q. How does that show up, then, in determining what is the difference in his net worth each year if he doesn't get any credit for it? You give him tax credit, I understand what you did there.

A. You give him credit. In the upper portion of the Net Worth Statement you list all the taxpayer's assets, you take them into account in the year in which they come to light. You total them and below that we allow him reserve for depreciation which accumulates. You allow him a credit for accounts payable, money he owes to other people, owes on equipment, then you offset the liabilities

(Testimony of Rex E. Webb.)

with assets to arrive at a net figure. Then you may add back in any specific figures you can determine from a matter of record. You add them back in and show he did have, instead of not only [109] increasing his net worth, he didn't spend that money so available to be spent. Had he bought his wife a diamond ring it would have gone in there could we have substantiated it by record and that is a paid out charge he paid out and it had to come from somewhere and belongs in that Net Worth Statement.

Q. How long have you been working in Douglas, has Douglas been included in your area?

A. I get to all the zone offices occasionally.

Q. How long has Douglas been included?

A. Douglas has always been a part of it since we maintained a zone office down there.

Q. In 1935 were you in and out of Douglas?

A. No.

Q. 1940?

A. No, I had never gone down there officially for the Government in 1940.

Q. Were you here in Arizona in 1940?

A. I was.

Q. At the time of this investigation down there in Douglas did you determine whether Mr. Calderon was working other than as reflected on the Net Worth Statement during the years 1941 to 1944?

Mr. Flynn: I object to it as not proper cross examination. Nothing in direct examination of this witness—

(Testimony of Rex E. Webb.)

The Court: He may answer. [110]

A. Possibly it was discussed in general. I wasn't too interested. There is one year in which this investigation involves wherein I think there is a salary of approximately seven hundred dollars and there was a withholding of income tax of ten dollars and something, that was the only salary income I discovered during the years in which this investigation involves.

Q. Did you try to find out whether Eddie was making very much money in 1941, '42, '43 and '44?

A. Well, he told me that machines were hard to get—

Q. Just a minute. Did you try to find out?

A. Yes.

Q. Did you discover he was making pretty good money during those years?

A. According to his accumulation of assets, yes, he had been doing pretty well.

Q. And did he tell you the slot machines he had out at the N.C.O. Club would sometimes bring in a hundred twenty to a hundred and fifty dollars a day, day after day?

A. No, he didn't tell me that.

Q. Did you know he had any coin operated machines spread around the county, you knew that, didn't you?

A. I knew he had at one time.

Q. You knew there were a great many soldiers in and out of Douglas and used Douglas for recreation during the years 1942, [111] '43, '44, and '45?

(Testimony of Rex E. Webb.)

A. Yes.

Q. You knew that this business was quite lucrative under those circumstances, didn't you?

A. If you have enough machines it is.

Q. You knew those soldiers and business condition in general, the soldiers were leaving and business conditions in general began to fall off in 1946, didn't you?

A. I doubt very much—I wouldn't know. I wasn't going into Douglas. I probably hadn't been in Douglas on official business, oh, I hadn't been into Douglas for years. I didn't know what the local situation was. In general business conditions were good in 1946.

Q. Mr. Webb, when you were making a Net Worth Statement it seems to me that would be pretty important to find out those things. Didn't you investigate?

A. A Net Worth Statement is a statement of assets a man owns at a beginning period. You have to pull them from a matter of record on good authoritative sources. We don't care if he made a million dollars in '41 and lost it in '42, the fact is the 1st day of January 1946 the man owns so much in bonds, he has so much money, he has so many pieces of property, he has so many automobiles, and it all costs him so much. That is your beginning point. That is his net worth as of that day; that is the thing we are interested in. [112]

Q. That is right. Now, assuming that Mr. Calderon had considerable more cash than is shown on

(Testimony of Rex E. Webb.)

this Net Worth Statement of December 31st, 1945, that would have a definite effect on this Net Worth Statement, wouldn't it?

Mr. Flynn: We object to it as assuming a fact not in evidence, hypothetical question.

The Court: He may answer.

A. After examining his prior income tax returns prior to 1946 I made no assumption he did have a lot of cash on hand.

Q. You didn't answer my question, Mr. Webb. Assuming he had it on hand, it would have made a considerable difference in this Net Worth Statement?

A. If he had the same amount of cash at the beginning of each succeeding year—

Q. Please, Mr. Webb, just answer one question at a time. Assuming Mr. Calderon had considerable more cash on hand December 31st, 1945, than the amount shown on the Statement, it would have had a definite effect on whether he earned as much money as this Statement showed in the succeeding years?

A. It would have an effect, yes, sir.

Q. Now, when you completed this Net Worth Statement and you saw earnings for 1944, eight thousand; 1945, eight thousand; 1947, eleven thousand; 1948, eight thousand; then in 1949 and 1946 the amazing figures of twenty-four thousand dollars and twenty thousand dollars, entirely out of line with the other [113] years, wouldn't that raise some

(Testimony of Rex E. Webb.)

question in your mind to say to yourself why did that happen?

A. In making the net worth balance——

Q. Excuse me, Mr. Webb, you are not answering my question. Wouldn't that raise some question in your mind as to how that occurred? A. Yes.

Q. Now, did you investigate to find out why that occurred, whether maybe there was more cash on hand, what business conditions were during 1946 in Douglas, where the cash came from that was deposited in the bank in the year 1949? Did you investigate any of that?

A. We investigated everything, 1946 to and including 1949, all his assets, and we used them when they came to light, when they popped up, which is proper.

Q. That is right, when they popped up, that is what you said.

A. When they come to light that is when you accept them as income.

Q. You recall this statement, Mr. Flynn, counsel for the Government—— A. Exhibit 11?

Q. Yes. I believe you stated on direct examination that before Eddie signed this you spent hours discussing this matter. Also on the same date you had Eddie sign this Net [114] Worth Statement, didn't you?

A. He signed the Net Worth Statement on the same date.

Q. Didn't you ask him to sign it? A. No.

Q. He just came in and said, "I want to sign

(Testimony of Rex E. Webb.)

the Net Worth Statement," is that it?

A. No. We went over the Net Statement item by item and substantiating with records——

Q. Please, Mr. Webb, just answer the question. Didn't you ask him to sign this Statement?

A. No, we told him if it was correct he had a right to sign it or he did not have to sign it and he was advised of his Constitutional rights by Mr. Tucker.

Q. So you advised him of his Constitutional rights and asked him to sign the Statement, didn't you?

A. I didn't ask him to sign the Statement.

Q. Anyway, you spent hours going over this Statement, didn't you, this Statement right here?

A. Yes.

Q. You had a lot of data you showed to Eddie so you could explain to him where all these figures came from, didn't you? A. We did.

Q. As a matter of fact, it was quite extensive, this discussion with Eddie?

A. We had been together since approximately 8:30 in the [115] morning of August 2nd, 1950; that Statement was signed late in the afternoon. We had been going over records and going over the entire phase of the case.

Q. And you gave Eddie the benefit of all these facts you had discovered, hadn't you, you explained them to him so that he would know this Statement was correct?

A. Every item was explained to him.

(Testimony of Rex E. Webb.)

Q. Yes. After all that was done, all completed, then Eddie signed this Statement, didn't he? You didn't ask him to sign this first, again went over this?

A. I wouldn't say whether it was before or after. There were some things brought to light. Eddie told us some things near the last minute when he made that statement that he hadn't told us before.

Q. But you had been over all this before this Statement was made, isn't that right? ▶

A. I think—yes, I think that is right.

Q. I don't mean this as being impertinent, Mr. Webb, is there anyone in this Court Room or jury or any one of us that could have sat there with you and listened to the explanation of this Net Worth Statement, the complete discussion of Eddie Calderon's affairs, and at that point not know that he hadn't included all of his—

Mr. Flynn: Just a minute. Have you finished your speech? [116]

Q. No, not yet. That he hadn't included all his taxable income or his receipts?

Mr. Flynn: We object on the ground it is improper, argumentative.

The Court: The question is argumentative.

Q. All right. As far as Mr. Calderon was concerned, after everything you had been over with him at the time you asked him to sign this Statement he certainly knew he hadn't included all his income, didn't he? You had been explaining that.

(Testimony of Rex E. Webb.)

A. He knew it before that.

Q. Oh, he knew it before that? Now, you tell me when he knew it before that.

A. The first time I ever saw Mr. Calderon that I recollect was when he walked into our office on the 9th day of June 1950, he didn't introduce himself, he comes in and he laid down one of these split books and he said, "I guess I have lost some of these or failed to give them to my bookkeeper." The first thing he said to me, he came in excited and he said, "I guess I have lost some of these or forgot to give them to my bookkeeper."

Q. Did he tell you then, "I know I filed some income tax returns and didn't put all my money in it?"

A. No, he didn't say that.

Q. All right, when did he say that? When he signed this [117] Statement was the first time he ever said that to you, isn't it?

A. He as much as said that when he admitted he hadn't turned all the income over to his bookkeeper.

Q. Did he ever say it to you? Don't tell me what you construe what he means by things. Did he ever tell you, "I didn't know I turned in all my income," until he signed this Statement?

A. No.

The Court: At this time we will take the regular morning recess. Please bear in mind, ladies and gentlemen, the admonition heretofore given you.

(Recess.)

Mr. Richey: No further questions.

Mr. Flynn: That is all.

EUGENE C. VERDUGO

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Flynn): Please state your name.

A. Eugene C. Verdugo.

Q. Where do you live?

A. 1119 H Street, Douglas, Arizona.

Q. What is your business or occupation? [118]

A. I am manager of the Jennings Lumber Company.

Q. You are acquainted with the defendant here, Edward Calderon?

A. I am, yes.

Q. Did you ever do any work for him?

A. I did.

Q. What was the nature of the work?

A. The nature of my work was bookkeeping, putting into records and books.

Q. When did you start that work?

A. I would say about in the early 1940's, I can't recall the exact year.

Q. Just describe what you did. I don't mean the particulars of it, but generally what you did in connection with keeping his records and books.

A. I put into books or records material which he furnished me in the way of receipts, disbursements and so forth.

Q. Were you a fulltime employee there?

A. No, I certainly wasn't.

Q. What was the source of your information for

(Testimony of Eugene C. Verdugo.)

the records you made and the entries you made in keeping his books?

A. Do you refer to any particular year or the beginning?

Q. No, generally what was your source? All during the time you were working for him what was the source of your information? [119]

A. At first the source of my information was a list of locations for every month and the amounts taken in from each particular location.

Q. Where did you get that information?

A. Mr. Calderon furnished it to me.

Q. In what form did he furnish it to you, orally or written form?

A. Written form on paper.

Q. What other information did you have as the basis for the entries into the books besides that?

A. I had a roll of invoices for each particular month and a list of the checks.

Q. Who furnished you those?

A. Mr. Calderon.

Q. Did you have any information yourself, any direct original information as to the source of his income or expenditures except as furnished by him to you? A. None.

Q. Did you make out any of his income tax returns? A. Yes, I did.

Q. What year?

A. Well, if I recall correctly, possibly the year 1943 must have been around the first one.

Q. Did you make out any after that?

(Testimony of Eugene C. Verdugo.)

A. Oh, yes, clear on up to and including 1950, I believe was [120] the last one, I am not quite sure.

Q. In making out those income tax returns where did you get the information for the figures that you put in those income tax returns?

A. The information I took from the books and records that were being used for his business.

Q. Books and records you kept?

A. That is right.

Q. Did you have any independent knowledge outside of what those books and records reflected of his income or his expenditures?

A. No, I didn't.

Q. So these income tax returns you made about him were based solely on the records that were kept by you?

A. That is right.

Q. And those records were based on information and data furnished to you by Mr. Calderon?

A. That is right.

Q. Did you ever have any conversation with Mr. Calderon about his income or his income tax returns?

A. Yes, I did.

Q. Can you place any particular conversation you had in which they were discussed?

A. It was either—I think it was the year 1948, that is it was in the year 1949 that we were discussing his 1948 tax [121] returns.

Q. Where did that conversation take place?

A. At his place of business.

Q. Who was present?

(Testimony of Eugene C. Verdugo.)

A. Mr. Calderon and myself.

Q. What generally was the discussion, without saying what was said, what were you discussing?

A. I was discussing his business, well, I would say, sir, his net profit and loss, I would say.

Q. Were you discussing any particular year's income or returns?

A. Yes, I think we were discussing the 1948 return.

Q. Can you tell the Court and jury substantially what was said in that conversation relative to any particular year's income, by Mr. Calderon or you?

A. I do remember telling him—I went through the profit and loss statement with him and I showed him where his music company, that is, the vending machine company, was losing money after depreciation. I told him he would be better off to close that business and get out of it, go to work at something else because he had long hours, killing himself, and it wasn't worthwhile because the statement that year showed a net loss after depreciation.

Q. Did you ever have any conversation with him relative to the collections from the different locations on these music [122] boxes?

A. You mean at any time?

Q. Yes, at any time during the years 1946 to 1949.

A. Yes, there was one particular year that I started numbering the books because in our conversation it developed that books were probably being misplaced or lost by he or his employees, that

(Testimony of Eugene C. Verdugo.)

went out on locations. And for my own information I numbered the books so that I knew I would be working with him in sequence and not have a book or two lost or out of the place of business at the time.

Q. Did he ever discuss with you at that time or at any other time the question of receipts from the operators where these machines were located?

A. Not up to and including 1949, no.

Q. After this investigation started, you recall when it first started? A. Yes.

Q. After it started did you have a conversation with Mr. Calderon about the receipts from these music boxes? A. Yes, I did.

Q. Where did that take place?

A. It took place in Mr. Calderon's automobile right outside my residence.

Q. And when?

A. It was in the evening. [123]

Q. What year or month, if you can fix it?

A. It was in 1950. I can't place the month but it was after the investigation started.

Q. Was anyone else present?

A. No, just us two.

Q. What was said at that time by Mr. Calderon in his conversation with you?

A. I asked Mr. Calderon why there was so much difference in the income we showed on the books and what was claimed that he had made and he at the time stated and told me that on some locations he hadn't put down the correct amount taken in

(Testimony of Eugene C. Verdugo.)

because the owners or proprietors of these locations had stated and stipulated to him they didn't want the right amount down. He thought about it in his own mind, thought of it very intensely. They told him if he didn't do it someone else would, so he did do that, according to what he told me. And I mentioned then to him it would have been very good, would have been all right as far as he was concerned if he would have reported his entire amounts himself and let them do what they wished.

Q. What did he say to that, if anything?

A. He didn't have much to say to that.

Q. That conversation you say took place in 1950 after this investigation started?

A. In 1950. [124]

Q. And did you ever discuss that with him before, during the time you were keeping his books?

A. Not that particular discussion, no.

Q. Did he make any other explanation at that time of the discrepancy in his reported income and what was claimed he made?

A. Yes, he went very extensively into lost receipt books, misplaced. I estimated with him and told him if he lost one receipt book which contained fifty sheets it could make a difference of one thousand to fifteen hundred dollars or possibly more receipts if that particular book had been lost and had not been reported to me.

Mr. Flynn: That is all.

(Testimony of Eugene C. Verdugo.)

Cross Examination

Q. (By Mr. Herring): Mr. Verdugo, your main business is the operation of a lumber company?

A. That is right.

Q. How long have you worked for this lumber company?

A. I have been working with him for fifteen years, going on fifteen years I would say.

Q. You have worked up from just an employee until you are local manager in Douglas of Jennings Lumber Company?

A. I started with them as a bookkeeper, up to local manager.

Q. In the early years, say, 1941 to 1942 you did some [125] outside extra work for your friends or people to augment your income, didn't you?

A. That is correct.

Q. In 1942 about Mr. Calderon came to you and asked you to keep his books for him?

A. Yes, he came to me.

Q. Before that his books had been kept by Mr. Speer, hadn't they?

A. That is correct.

Q. Mr. Speer was an elderly gentleman in Douglas who had run a restaurant and candy store?

A. I would say a confectionary store, yes.

Q. Who was a very good friend of Eddie and Eddie's family? A. That is right.

Q. As a matter of fact, Eddie's brother worked for Mr. Speer, didn't he? A. Yes.

Q. Mr. Speer had gotten elderly so Eddie asked

(Testimony of Eugene C. Verdugo.)

you to take on the job of doing his books instead of letting Mr. Speer do it, is that correct?

A. Eddie came to him, not exactly right away but I would say three or four months after Mr. Speer was unable to continue with the records and asked if I wouldn't give him a hand so he could make his income tax report.

Q. Mr. Speer had kept his records up to that time in a [126] rather complete but a rather primitive fashion, had he not?

A. I would say yes.

Q. At that time did Eddie know anything at all about bookkeeping or business affairs?

A. Well, in my estimation he hasn't known very much about bookkeeping at all, even today.

Q. He didn't know anything about it then and he doesn't know anything about it now. At the time he came to you you more or less took this on as a personal favor for Eddie, didn't you?

A. That is right.

Q. Did you believe this would be very much of a job?

A. No, I didn't.

Q. At first it wasn't, was it?

A. No, it wasn't.

Q. Eddie was working at the smelter at the time too, wasn't he?

A. I know he worked there at the smelter one year. I don't recall when.

Q. Eddie's practice was to bring you at the end of every month all his receipt books, receipts and invoices and you would enter them up for him?

(Testimony of Eugene C. Verdugo.)

A. Not the first years. I would get a year's all at once.

Q. At the end of the year?

A. That is right.

Q. And he would have invoices with rubber bands around them [127] for each month?

A. That is right.

Q. And his receipt books were scraps of paper, whatever he had to show the receipts?

A. That is right.

Q. You made the entries and from that made the income tax returns? A. That is right.

Q. When did you start spending more time with Eddie's books?

A. I would say around the year, either '46 or '47, when he opened up a music store on G Avenue and he had office space then.

Q. Up until that time he had been operating his business out of the back of Mr. Speer's store, hadn't he? A. That is right.

Q. That was on, oh, just past 11th Street on G Avenue? A. Yes.

Q. During that same period from 1942 to 1946 your duties in your own business had increased tremendously, hadn't they? A. Very much so.

Q. And Eddie's business was increasing? In fact, during the war it was a big business, a big job? A. That is right.

Q. When did you first determine or begin to feel it was too big a job for you to try to handle in connection with your [128] other business?

(Testimony of Eugene C. Verdugo.)

A. I don't recall the year but I did mention to Eddie his business was getting such he needed someone to work there all day long to handle everything as it should be handled.

Q. That was along in '45 or '46, during the war, wasn't it? A. It was around——

Q. 1944? A. No.

Mr. Flynn: Just let the witness answer.

A. About 1947, I would say.

Q. Eddie tried to find somebody else, didn't he?

A. I don't really know whether he did or not.

Q. At any rate you continued with it until 1950?

A. That is right.

Q. During this time—by the way, you have known Eddie Calderon practically all your life?

A. I have known Eddie for many, many years.

Q. You know his educational background and all about him? A. Yes.

Q. I think he went for two or three months to high school was all?

A. I know he had to quit school to work.

Q. He got into this coin operating business and this music business while he was a fry cook at a little off-the-arm restaurant? [129] A. Yes.

Q. You know he has worked very hard all his life and has been very thrifty?

Mr. Flynn: We object to that as improper cross examination of this witness, your Honor. Defensive matter. If they want to put the man on and testify to his life's history it is all right, but not proper cross examination.

(Testimony of Eugene C. Verdugo.)

The Court: He can answer the question, but don't get too far afield.

Mr. Herring: Would you read the question, Mr. Reporter?

(Last question read.)

A. Yes, I do know he has worked hard.

Q. Mr. Verdugo, from the way Eddie kept his records from the time you started to work to help him out, from 1942 clear through 1947 or 1948, his records were very fragmentary, weren't they?

A. Always, yes.

Q. You never were sure at the end of the year in your own mind quite whether you got everything or not because of that, isn't that right?

A. After viewing his profit and loss statement I didn't feel in my own mind everything was run through there.

Q. Do you recall you talked about this conversation you had with Eddie after this investigation started, you told him there was this discrepancy that appeared from this statement [130] the Internal Revenue man had shown you and he told you about the lost receipt books? A. Yes.

Q. And you explained to him that might make a difference of one thousand, fifteen hundred, maybe two thousand dollars for each book?

A. Approximately for each book. It would vary.

Q. Which would make a tremendous difference if he lost two or three in any one year?

A. That is right.

Q. At one of these conversations also you sug-

(Testimony of Eugene C. Verdugo.)

gested to him he was losing money in his coin operated machine business, his music boxes and pinballs and so forth, didn't you? A. Yes.

Q. Didn't at that time Eddie tell you, "Well, Gene, it looks to me like I make money, I pay out everything and then I have something left," isn't that about what he said? He didn't seem to understand what you were talking about?

A. No, I don't think he mentioned that at that particular time. I don't recall that conversation.

Q. What did he say?

A. At that time all Eddie told me I can remember was, just kind of looked blank to himself and smiled and that was all, blank.

Q. Apparently it didn't make much sense to him, is that the [131] idea?

A. He perhaps never comprehended what it meant, maybe.

Q. When this investigation started you were in on several conversations with Mr. Webb and Mr. Tucker? A. Yes.

Q. During the course of these conversations did you tell them, or you told them, didn't you, that Eddie kept from the very nature of his business quite large amounts of cash in his safe?

A. I remember telling one of them, I don't remember which one, Mr. Tucker or Mr. Webb, that he did carry cash, plenty of cash in his safe because of the nature of his business, he had to be making change, cashing checks and so forth for his locations.

(Testimony of Eugene C. Verdugo.)

Q. Eddie told them too, didn't he?

A. Not in my presence. He might have told them when he was with them alone.

Q. Did he keep large amounts in his safe, Mr. Verdugo?

A. I know that he kept money but I never knew the amount because I never had any chance to check it or even count it.

Q. Did you happen to notice in the safe, notice the money?

A. I had noticed him making change from the safe but never noticed the amounts.

Q. Now, did Mr. Webb or Mr. Tucker when this discussion took place about the large amounts of cash he had to keep in his [132] safe for business purposes, did they ever ask you how much he kept in his safe? A. No.

Q. Did they ask him in front of you how much he kept in his safe? A. Not in front of me.

Q. Mr. Calderon was there when one of these conversations took place, wasn't he? A. Yes.

Q. Did they show any further interest in any amount of cash he might have had in his safe at any time? A. Not in my presence.

Q. During this investigation when Mr. Webb and Mr. Tucker were investigating this whole matter did Mr. Calderon cooperate with them to the utmost?

Mr. Flynn: We object to that as calling for a conclusion of the witness. State what was said and done, let the jury determine whether he cooperated.

(Testimony of Eugene C. Verdugo.)

Mr. Herring: This is cross examination.

The Court: Oh, he may answer.

A. Yes, he did.

Q. You also cooperated with them as Mr. Calderon's accountant to your utmost?

A. I certainly did, yes.

Q. What were Eddie's orders to you as his book-keeper concerning your cooperation with them?

Mr. Flynn: We object to that as a self-serving declaration after the investigation started.

The Court: No, he may answer.

A. He told me we should give them everything they asked for.

Q. Mr. Verdugo, this Statement, these figures that Mr. Tucker and Mr. Webb produced after their investigation, they showed them to you, this Net Worth Statement or whatever it was?

A. Yes, I saw them.

Q. At this time did you investigate independently any of the figures that were on there?

A. I certainly didn't.

Q. You relied on what they told you about their accuracy?

A. You mean the figures that were on the Net Worth?

Q. That is right. The only thing you approved of, looked all right to you, was the procedure that they had gone through?

A. That is the only thing I approved.

Q. None of the figures, you knew nothing about any of them?

(Testimony of Eugene C. Verdugo.)

A. None of the figures, I didn't know a thing about any of them.

Q. During your acquaintance with Mr. Calderon, your business and personal acquaintance, you know, do you not, he has relied on others for his book-keeping and for legal work and insurance and everything else? In other words, he relies completely on other people for that, on technical matters? [134] A. Yes.

Q. How many times in the course of this investigation did you tell Mr. Tucker or Mr. Webb or both of them that you were sure in your own mind and from your knowledge of Eddie that he never intended to defraud anybody?

Mr. Flynn: We object to that as immaterial and not proper cross examination.

The Court: He may answer.

A. I think I told both of them possibly at least twice.

Q. Did Eddie ever make any entries on his books himself as far as you know?

A. Not that I know of.

Mr. Herring: That is all.

Mr. Flynn: That is all. The Government rests.

Mr. Herring: I would like to make a motion at this time, your Honor.

At this time, your Honor, I would like to move on behalf of the defendant the case be dismissed on the basis the Government has completely failed to prove a case. There is no corpus delicti, no case proven of any sort.

If you would like to discuss it further in the absence of the jury or in front of them, it makes no difference to me.

The Court: No, I have followed the matter, Mr. Herring, and your motion will be denied at this time.

Mr. Herring: Your Honor has probably read the authorities [135] I have in mind. I am not sure you have, of course.

The Court: I have read a great many of the cases where the prosecution was based on net worth, is that what you mean?

Mr. Herring: Yes.

The Court: I think from the motion you made heretofore I am quite sure I appreciate your point and, as I say, I have read a great many authorities on that proposition. The necessity for a sound basis, and so on, I imagine that is one of your points.

Mr. Herring: Yes.

The Court: On the matter of corpus delicti, the Spriggs case is one case.

Mr. Herring: That is one, then there are several cases in 175, 176 and 179 Federal 2nd. I don't believe the Government has proven a corpus delicti at all or proven a case at all sufficient on the basis of those cases.

The Court: Well, the motion will be denied at this time.

Mr. Herring: Your Honor, we have some witnesses here from Douglas who are character witnesses. Ordinarily, of course, they would be put on last; to convenience them I wonder if I could in-

dulge your Honor and counsel to put them on at the present time, start putting them on now, between now and noon.

The Court: Yes, you may do that.

FRANK SHARP, JR.

called as a witness herein, having been first duly sworn, [136] testified as follows:

Direct Examination

Q. (By Mr. Herring): State your name.

A. Frank Sharp, Jr.

Q. You live in Douglas, Mr. Sharp?

A. Yes, I do.

Q. You have lived in Douglas how long?

A. Since 1917.

Q. How long did you work for the Bank of Douglas?

A. I went to work for the Bank of Douglas in 1917.

Q. How long did you work there?

A. Until 1947, thirty years.

Q. During that period you were also a member of the State Legislature?

A. Yes, six terms.

Q. You are now in what business?

A. I am in the real estate and insurance business at the present time.

Q. On your own?

A. On my own, yes.

Q. During the time you have lived in Douglas have you become acquainted with Mr. Eddie Calderon?

(Testimony of Frank Sharp, Jr.)

A. Yes, I have known Mr. Calderon a great many years.

Q. From that knowledge and association with Mr. Calderon has [137] any of it been in a business way? A. Yes.

Q. From that association state whether or not you know if Mr. Calderon relies on other people for matters such as insurance and his insurance coverage entirely?

Mr. Flynn: Objected to as no defense, nothing to do with a character witness.

The Court: I don't see the materiality of it, Mr. Herring.

Mr. Herring: Of course, your Honor, it is quite obvious in this case the defendant has relied—

Mr. Flynn: Counsel is testifying now. We would like a ruling on it. If counsel can testify we might as well let this man testify.

The Court: I don't see the materiality of it. He is entitled to show me where he thinks it might be material if he can.

Mr. Herring: It is material in this respect. It is our position Mr. Calderon has relied on other people due to his background and lack of education to take care of all matters of insurance, matters of accounting.

The Court: There is where I don't see where it is material. This question is relating to insurance.

Mr. Herring: Yes.

The Court: I don't see the materiality of it, Mr. Herring.

(Testimony of Frank Sharp, Jr.)

Q. (By Mr. Herring): All right, Mr. Sharp, do you know other people in the community that know Mr. Calderon? A. Oh, yes, a great many.

Q. Do you know Mr. Calderon's reputation in the community in which he lives for being a truthful and law-abiding citizen?

A. His reputation has always been very good.

Mr. Herring: That is all.

Mr. Flynn: No questions.

CURTIS PAGE

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Herring): What is your name, sir?

A. Curtis Page.

Q. You live in Douglas, Arizona?

A. Yes, sir.

Q. How long have you lived in Douglas?

A. Since 1937.

Q. What is your business there at the present time?

A. Half owner of Brown-Page Mortuary.

Q. Do you know Mr. Eddie Calderon, the defendant here? A. Yes, sir.

Q. How long have you known him?

A. Since 1937.

Q. You know other people that know him in the community in [139] which you live?

A. Yes, sir.

(Testimony of Curtis Page.)

Q. Do you know his reputation for being a truthful and law-abiding citizen in that community?

A. Yes, sir.

Q. Is it good or bad? A. Good.

Q. Do you know his reputation for being an industrious and thrifty citizen? A. I do.

Q. What is that? A. Very good.

Mr. Herring: That is all.

Mr. Flynn: No questions.

GEORGE FLEETHAM

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Herring): What is your name?

A. George Fleetham.

Q. What is your business, Mr. Fleetham?

A. I am in the garage business, servicing and storage.

Q. You live in Douglas? A. Yes. [140]

Q. How long have you lived there?

A. Since 1925.

Q. Do you know Eddie Calderon?

A. Yes, I have known him a long time.

Q. Do you know other people in the community that know Eddie? A. Yes.

Q. Do you know Mr. Calderon's reputation in the community in which he lives for being a truthful and law-abiding citizen?

A. It has always been good.

(Testimony of George Fleetham.)

Q. Do you know his reputation for being an industrious and thrifty citizen?

A. Yes, he has been a very hard worker.

Mr. Herring: That is all.

Mr. Flynn: That is all.

HENRY BEUMLER

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Herring): What is your name?

A. Henry Beumler.

Q. Where do you live, Henry?

A. In Douglas, Arizona.

Q. What is your business or profession?

A. I am an attorney. [141]

Q. How long have you lived in Douglas?

A. Since 1913.

Q. You were born there, weren't you?

A. That is right.

Q. What position do you now hold in the municipal government of the City of Douglas?

A. I am the Mayor.

Q. You are also United States Commissioner in Douglas? A. Yes.

Q. Do you know Edward Calderon sitting here?

A. I do.

Q. How long have you known Eddie?

A. I don't know, I knew him before I went in the Army, that was 1940, I think, about fifteen

(Testimony of Henry Beumler.)

years, something like that.

Q. Do you know others that know him in the community? A. Yes, I do.

Q. Do you know his reputation in the community in which you live for being a truthful and law-abiding citizen?

A. It has always been good.

Q. Do you know his reputation for being a thrifty and industrious citizen?

A. That is good too.

Q. Has that been good? A. Yes.

Mr. Herring: That is all. [142]

Cross Examination

Q. (By Mr. Flynn): What are your duties as United States Commissioner?

A. Somewhat the same as a Justice of the Peace does in the State set-up, when people are brought before me as United States Commissioner I ascertain if there is sufficient evidence to hold them for the United States District Court.

Q. Have you had many hearings down there?

A. During the last week we had fifteen wet Mexicans.

Q. In other words, people who are charged with crime are brought before you for preliminary hearings? A. If they are Federal cases, yes.

Q. How long have you been Commissioner?

A. Four years and three months, I think.

Q. Did you ever have anybody brought before you charged with a crime that prior to that time

(Testimony of Henry Beumler.)

had a good reputation? A. No, I didn't.

Q. Never?

A. Will you ask that question again?

Q. Did you ever have anybody brought before you charged with a crime whom you knew and prior to that time bore a good reputation?

A. Oh, yes.

Mr. Flynn: That is all. [143]

PERCY BOWDEN

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Herring): What is your name?

A. Percy Bowden.

Q. You live in Douglas, Arizona?

A. Yes, sir.

Q. How long have you lived there, Mr. Bowden?

A. Since 1914.

Q. What position do you now occupy in Douglas?
A. Chief of Police.

Q. How long have you been Chief of Police?

A. Thirty-one years.

Q. Do you know Eddie Calderon?

A. Yes, sir.

Q. How long have you known Eddie?

A. I have known him since he was a small boy.

Q. Do you know his reputation in the community in which he lives for being a truthful and law-abiding citizen?
A. Yes, sir.

(Testimony of Percy Bowden.)

Q. Is it good or bad? A. Good.

Q. Do you know his reputation in that community for being [144] thrifty and industrious?

A. Yes, sir.

Q. What is it? A. Good.

Mr. Herring: No further questions.

Mr. Flynn: That is all.

Mr. Herring: Your Honor, could we take our noon recess now and begin with whom I believe will be our last witness immediately after the noon recess?

The Court: Very well. We will recess today until 1:30.

(Whereupon a recess was taken at 12:00 o'clock noon until 1:30 o'clock p.m.)

LOUIS ACOSTA

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Richey): Please state your name.

A. Louis Acosta.

Q. Where do you live, Mr. Acosta?

A. Douglas, Arizona.

Q. How long have you lived in Douglas?

A. Since 1922.

Q. What is your present business or occupation?

A. I am in real estate and insurance, doing accounting, [145] income tax work.

Q. You also do tax work and accounting, you

(Testimony of Louis Acosta.)

say? A. Yes.

Q. Prior to 1946 by whom were you employed?

A. The Internal Revenue Department.

Q. Deputy Collector?

A. Deputy Collector, yes, sir.

Q. Do you know Mr. Calderon here at my left?

A. Yes, sir.

Q. How long have you known Mr. Calderon?

A. About twenty years, I would say.

Q. Do you know other people in the city of Douglas in the community in which you and Mr. Calderon live who also know Mr. Calderon?

A. Yes, I do.

Q. Do you know his reputation among the people in Douglas for truth and veracity?

A. I do.

Q. What is his reputation for truth and veracity? A. It is very good.

Q. Do you know his reputation in the same community for being an industrious and thrifty person and citizen? A. I do.

Q. What is that reputation?

A. It is very good. [146]

Q. During the period of time you have known Mr. Calderon when it is necessary for him to have any bookkeeping or tax work or any technical work done have you ever known of him to do it himself?

Mr. Flynn: Objected to as immaterial, not material to the issues in this case.

(Question read.)

The Court: He may answer.

(Testimony of Louis Acosta.)

A. He always comes and asks about it.

Q. He relies on other people for it then?

A. Usually he does.

Mr. Richey: That is all.

Cross Examination

Q. (By Mr. Flynn): Did you do any tax work for him in connection with his income tax returns for 1947 to 1949?

A. No, sir.

Mr. Flynn: That is all.

Mr. Richey: That is all.

EDWARD B. CALDERON

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Herring): Mr. Calderon, you speak as loudly as you can. You are [147] the defendant in this action? A. Yes.

Q. You live in Douglas?

A. Yes, Mr. Herring.

Q. How long have you lived in Douglas?

A. Since 1916.

Q. Where did you go to school, Mr. Calderon?

A. In the Douglas public schools.

Q. How many were there in your family?

A. Three sisters and two brothers.

Q. Your father and mother are still living?

A. Yes, they are still living.

(Testimony of Edward B. Calderon.)

Q. What grade did you get through in the public schools of Douglas?

A. I went up to about two months in high school.

Q. Up to high school?

A. Up to two months.

Q. What year was that? A. In 1926.

Q. In about 1933 and '34 where were you working in Douglas?

A. I was a fry cook at the Coney Island Cafe.

Q. How much were you receiving a week as fry cook?

A. I was working twelve hours a week——

Q. How much did he pay you?

A. Eight dollars a week, a dollar a day. [148]

Q. And meals? A. Yes, meals too.

Q. At that time were you married?

A. I married in 1933.

Q. Where were you living at that time?

A. 319 Seventh Street.

Q. Is that the home of your father and mother?

A. Yes.

Q. You have lived there always?

A. I have always lived there, yes.

Q. Does your father work at the present time?

A. No, he doesn't.

Q. How long has it been since he has been able to work?

Mr. Flynn: Objected to as immaterial.

The Court: Objection sustained.

Q. Mr. Calderon, in 1933 and 1934 when you

(Testimony of Edward B. Calderon.)

were working as a fry cook at the Coney Island did you become involved or get into the coin operated machine business?

A. In 1935 I believe i did, yes.

Q. How did it happen?

A. I was working in the Coney Island when one, they call them operators of amusement machines, came in with two small counter penny vending machines or counter slot machines, they call them. He told me if I would lend him or he wanted to hock me those two machines for seven dollars and he would give [149] me ten dollars in about a week, he would come down and pick them up. I didn't have the money but I asked the proprietor to let him have the seven dollars. So I let him have the seven dollars and he gave me the two machines. I set them back in the restaurant there and I waited for about a week or two to see if he would come back for his machines. He didn't come back in about two or three weeks so I knew I needed the money, my seven dollars, so I thought I had better see if I could get those machines working. So I went to see those machines, they were locked. I didn't have any keys to open so I pried the doors open and monkeyed with it. I got to finding out a lot of that stuff was broken inside, so I fixed the springs, tried them and I finally got one of them working. So I asked the proprietor if I could set that penny machine on the counter to see if I could make my money out of it. He said, "Yes, you can go ahead and set

(Testimony of Edward B. Calderon.)

it up." I put that machine up there. In about a week we checked it and it had about eight dollars worth of pennies. So I thought that was pretty good, I was making eight dollars a week on my wages and four dollars from that machine. I thought I had better fix the other one and I went ahead and monkeyed with it, it was broken too. I got to monkeying with it and I finally got it straightened out. So I went and placed that machine right by the other one and I asked the proprietor again about having this machine and he said go ahead. I put it there too, but [150] this machine didn't turn out to be so good because every time they played it, almost every time, it paid off. So at the end of eight days we checked it but that machine hadn't done any good so the proprietor said if it don't do any good you might as well take it down. So I did. In the meantime, I don't know, maybe three or four weeks later, one of those fellows that was peddling machines, he came in with a nickel machine, counter nickel slot machine. He told me if I would want to buy that, I told him, "Well, no, I don't think I want it." He insisted, he said he wanted twenty-five dollars, so I told him no. So I think finally he finally came down to seventeen or eighteen and so I bought it from him. So I asked the proprietor again if I could set this nickel machine beside where the penny one was and he said, "Go ahead." This time he sold it was about five o'clock in the afternoon—

Q. To interrupt you, Mr. Calderon, from that

(Testimony of Edward B. Calderon.)

time on gradually you got into the coin operated machine business, is that correct?

A. Well, I didn't want to go into that business. The only thing, when I bought that nickel machine that night I went home and when I came back in the morning he told me, "You had better get the nickels out because I am out of nickels." There was about eighteen or twenty dollars in there. I couldn't believe it because I was only making a dollar a day. I didn't think that was right, so I just didn't want to get [151] started on that. Finally I went for something next door to McLellan's—

Q. Anyway, Mr. Calderon, from that later you got other kinds of machines, didn't you?

A. Well, yes, this fellow kept coming back, then this other place where I had worked before as a dishwasher, they began asking me why I didn't buy those machines and put them in their places, so I did. I bought a couple more. I started the business that way. That was the way I got started. Can I go on?

Q. How long did you keep working at the Coney Island? A. Up to 1939.

Q. During that time you were operating your machines and continuing to work as a fry cook?

A. I kept on buying a few more machines, yes, sir.

Q. During that time did they finally stop the use of slot machines in Douglas, in that area?

A. Well, I think up to 1939, yes, just before the war started, yes, they did, those pinballs.

(Testimony of Edward B. Calderon.)

Q. In the meantime had you got any other kinds of machines?

A. Yes, I had acquired music boxes and automatic pinball machines and some of these cigarette penny vending machines.

Q. During that time did you have any central place of business at all?

A. No, I didn't have any place where I was doing any business [152] at all.

Q. Where did you repair these machines?

A. Right in the places, I would go in and fix them.

Q. Where did you keep your money?

A. I started to keep my money in my trunk at home.

Q. In your trunk at home? A. Yes.

Q. You mean right in your bedroom?

A. Yes, in my bedroom.

Q. Who kept your books for you during that period?

A. When I started this business when I first had to fix machines, merchants told me, "You have to get a States Sales Tax and City License." I didn't know how to do it so they told me and I got those. Then they began to tell me I had to have books so I could make these reports. I didn't know what to do because I didn't know anything about books, I don't know anything about them. I couldn't get them started. I finally thought of my brother's boss, Mr. Speer. I went and asked him and he said, "You go down to the drugstore and get a dozen of

(Testimony of Edward B. Calderon.)

those sales books, bring them down and I will show you how to make those reports and I will get you a set of books and keep them for you. Every night you leave your books here on top of my desk, your collection books, and leave any receipts, any invoices, anything you buy." He asked me if I had a savings account or any bank account. I said, "Yes, I [153] have a savings account in the Bank of Douglas." He said, "You bring that, leave it there." And he advised me to get a checking account and I went ahead and did that. He started taking care of my books then, he is the one that got them started.

Q. He is the one that started your bookkeeping?

A. Yes.

Q. Do you remember what year that was in?

A. That was about 1936.

Q. Then Mr. Speer kept your books and records how long?

A. Until his health failed and it was about 1943, about the middle of 1943, yes.

Q. Who made out your income tax returns during that period?

A. Up to 1942 Mr. Speer did.

Q. I hand you Government's Exhibit 7, Eddie, being a savings account in your name and your wife's name in the Bank of Douglas. Do you remember when that was opened?

A. I think it was about 1940, I am not sure.

Q. Look at it. Do you remember?

A. 1935.

Q. Had you had a savings account prior to that?

(Testimony of Edward B. Calderon.)

A. In 1927 I had one but during the depression I took out the seventy-five dollars.

Q. You saved seventy-five dollars and you used it up during the depression? [154] A. Yes.

Q. Where did you keep your checkbooks and your bank books and things that had to do with your bank receipts, your bank deposits?

A. Mr. Speer had all those checkbooks and everything.

Q. After Mr. Verdugo took Mr. Speer's place in about 1942—

A. I think it was 1943, I believe.

Q. 1943? A. Yes.

Q. Where did you keep the checkbooks and bank books then?

A. When I went to hire Mr. Verdugo I told him I didn't know anything about the books, he would have to go see Mr. Speer because I didn't know anything about them. So Mr. Verdugo went to Mr. Speer. Mr. Speer handed him everything he had in the desk.

Q. Mr. Speer made Mr. Verdugo acquainted with everything that had been done up to that time?

A. Yes.

Q. At that time where were you doing business, did you have a central place of business?

A. I started to fix my machines right in back of Speer's confectionary, in the same building.

Q. That was just north of 11th Street in Douglas?

A. It is in the 1100 block, in Douglas, yes.

(Testimony of Edward B. Calderon.)

Q. On G Avenue? [155] A. On G Avenue.

Q. Where did you keep your bank books and your business records in that office?

A. On top of my desk.

Q. Was that desk used by Mr. Verdugo at any time?

A. At first he started using it right when Mr. Speer turned over the books, he left everything on top of my desk, told me to leave everything like that and he would come down every eight days and take care of the books.

Q. Did he keep that up or did he later have you bring them up to his home?

A. When he first started he kept going there every two or three weeks, then he fell down to about a month, he didn't show up, up to the time I had to go to the hospital, then he told me to wrap up the— at the time I had to go to the hospital I called him, I wanted to tell him I had to go to the hospital. So he told me to leave everything like he had always done it, to leave everything on the desk. But he said "It will still be better if you have the boys wrap up these invoices every month and send them to my house so I can keep the books better there."

Q. Did you turn everything and all your receipts and all your invoices and everything you had over to Mr. Verdugo from time to time just as you had with Mr. Speer?

A. He told me right there, he said, "You don't have to [156] worry, just go to the hospital, I will do everything like you have done all the time. Have

(Testimony of Edward B. Calderon.)

the boys turn everything in here and you go ahead to the hospital and I will take care of your books."

Q. Calling your attention to the years 1942 through 1945 in Douglas, what was the condition of business generally in Douglas at that time?

A. 1942 to 1945?

Q. Yes.

A. That was the best years I ever had in my line of business on account of the Air Base. Of course we couldn't buy any new equipment. We didn't have to spend too much money to buy equipment. All we had to do was take up money. The boys there at the Douglas Air Base helped the town and the smelter going at full blast, there was plenty of money at that time.

Q. During that time, however, slot machines as such were not allowed in your end of Cochise County, were they?

A. No, not in Cochise County but they were allowed at the Douglas Air Base.

Q. Did you have anything to do with those at the Air Base?

A. Yes, I remember buying about 1941, I bought thirteen or fifteen slot machines for one hundred seventy-five dollars and along with a few others I had them working at the Air Base.

Q. Where were they at the Air Base? [157]

A. At the N.C.O. Club and the Officers Club, most of the clubs at the Air Base.

Q. Did they finally buy those machines them-

(Testimony of Edward B. Calderon.)

selves and you service them or were they yours all the time the Air Base was open?

A. The only place that bought the machines was the Officers Club. The other places I had the consoles in there.

Q. Besides that you had how many music machines, do you recall?

A. I must have had at that time about thirty-three machines, I imagine.

Q. How many?

A. I must have had thirty-three or thirty-four music machines.

Q. Can you give us any idea how many pinball machines you had and so forth?

A. All over, you mean in the town and the Air Base?

Q. Yes.

A. I recall at least about ten at the Air Base and maybe—the pinballs, you are talking about?

Q. Yes.

A. Because the slot machines weren't allowed in town. We had pinball machines, I must have had twenty or thirty, pinball machines, I imagine.

Q. So during the years 1942 to 1945 were you able to buy new equipment? [158]

A. 1942 to 1945?

Q. Yes.

A. No, there was no equipment available at all. We had to buy anywhere we could, just used machines. And we were buying pinballs as cheap as twelve and fifteen dollars, the pinballs. But the slot

(Testimony of Edward B. Calderon.)

machines, they ran maybe forty or fifty dollars.

Q. And music machines weren't available at all?

A. No. I remember I bought some, maybe a hundred fifty or a hundred and twenty-five dollars.

Q. When did you stop keeping your money at home in the trunk?

A. The first when I first started my operation, you know, about 1935 or 1936.

Q. Yes, then when did you stop doing that?

A. When did I stop?

Q. When did you get a safe?

A. It was about four—this safe I was using belonged originally to Mr. Speer and when he was sick and went to the hospital about 1944 or 1945 he went ahead and let me use the safe. That was when I transferred my money to the safe.

Q. Did your business require you to keep large amounts of cash and change in that safe?

A. Yes, sir, it did. It seemed like the Air Base and all these places depend on me to give them change and I had to have a lot of change. [159]

Q. Also, Eddie, over the years while you were keeping your money at home in the trunk had you formed a habit in regard to depositing money, did you deposit all your money?

A. Occasionally I would, yes.

Q. How did you do that? Tell the Court and jury how that happened.

A. During the time—

Q. All the time, the habits you formed with the trunk.

(Testimony of Edward B. Calderon.)

A. Well, I would deposit money occasionally in my safe and in my checking account, not very often because I was very busy. I was working at the smelter too and at that time during those years the banking hours, the time I was working, I couldn't go to the bank so I made it especially when I could get to the bank and deposit those.

Q. After you had this safe down at Mr. Speer's did you continue that same practice?

A. About depositing it?

Q. Yes.

A. Yes. Occasionally I would take some down to the bank, some of my savings.

Q. As a result of that practice of yours did you build up quite a reserve of cash in your safe from time to time? A. Yes, sir, I did, sir.

Q. Well, can you give us any idea how much cash you had in that safe about the end of December, 1945, let's say? [160]

A. At the end of December, 1945, that was right after the war years, I could have accumulated maybe—I don't know, maybe sixteen or seventeen thousand dollars.

Q. Sixteen or seventeen thousand dollars?

A. Yes.

Q. During the year 1946 what did you do with that money, Eddie, do you recall?

A. By 1946, after the war, all this new equipment began to come in so we had competition and we had to rebuild our machines, restock them with new machines because by that time all this com-

(Testimony of Edward B. Calderon.)

panies began to let us have new machines and new equipment.

Q. Now then, during 1946 and the early part of 1947 did you reduce the amount of cash you had in your safe, do you recall?

A. Evidently I had to reduce the amount of cash, yes, because I had bought this equipment.

Q. By the beginning of the year 1949 or the end of 1948 what was your position in regard to the cash you had in your safe again?

A. All this new equipment I had bought in 1946 and some in 1947, by 1947, '48 and '49 then of course I started building up my cash again.

Q. At the beginning of the year 1949 do you have any idea how much cash you had on hand?

A. I did not get your question. [161]

Q. At the beginning of the year 1949 do you have any idea how much cash you had on hand?

A. At the beginning of 1949?

Q. Yes. No, at the end of 1949.

A. Well, I don't think I had too much in cash, maybe three or four thousand dollars.

Q. Now, Mr. Calderon, during the years that Mr. Verdugo made your income tax returns for you did you ever have anything to do with keeping the books at all?

A. Nothing at all, no, sir.

Q. Who did you rely on to make these income tax returns?

A. Mr. Verdugo.

Q. And did you give him all the information you had and turn over to him all the receipts you took in?

(Testimony of Edward B. Calderon.)

A. Yes, sir, everything he wanted I turned it over to him.

Q. Were you ever approached by any of your customers to give them receipts which showed that you took less money out of their machines than you actually did?

A. The first time one of those merchants approached me that was about the beginning of—either the last of 1943 or beginning of 1944. I recall that because I was sick with my injured back and I went in to check the machines. After I got through checking and had my money counted out I started to make my receipt and the merchant told me, "Look, don't put down everything. After all, we are paying all these taxes and we [162] pay enough tax as it is." For one reason or another I didn't believe that was right so I told him, "I don't think that is right. I think I had better ask my bookkeeper before I do that." He kept arguing and I told him I couldn't do it. I finally went out and made the receipt the same as we had always done it. I didn't comply with his request the way he had asked me.

Q. Then what did you do? Did you discuss that with Mr. Verdugo at all?

A. I didn't discuss it right there but I kept in mind I had better ask him. So I would say about April I was walking and exercising my leg—

Mr. Flynn: Do you have the year fixed on this?

Q. What year?

A. About April 1944. I was exercising my leg

(Testimony of Edward B. Calderon.)

at the park one late afternoon and I saw Mr. Verdugo coming across the 10th Street Park. I hadn't seen him for three or four months. So I called him over and he asked me how I was. I told him I was pretty sick. It was the time I told him, "Look, there is a fellow asked me to——

Mr. Flynn: If the Court please, I would like to interpose an objection at this time on the ground that Mr. Verdugo was on the stand and he was not asked about this conversation on cross examination, no foundation laid for impeachment. And any statement or conversation related by this witness would be [163] clearly self-serving unless it would serve the purpose of impeachment. There was no foundation laid for impeachment.

The Court: I think Mr. Verdugo talked about the conversation he had about this same matter but it was later in time. I don't think this conversation was covered.

Mr. Herring: Counsel for the Government asked Mr. Verdugo, "Did he ever mention anything like this to you before?" Mr. Verdugo said, "No." Is there any particular reason for me to challenge Mr. Verdugo's statement? If he doesn't remember it I have the right now to show such a conversation did happen, both to impeach Mr. Verdugo and to make the issue on the statement which has been brought up. After all, the Government are the ones that brought this issue up.

Mr. Flynn: If counsel contend there was any conversation at that time, while Mr. Verdugo was

(Testimony of Edward B. Calderon.)

on the stand it was his duty to give him an opportunity to ask him an impeaching question. A fundamental rule of impeachment, you have to give the man on the witness stand an opportunity to say what was said. That is the only way to lay a foundation for impeachment.

Mr. Herring: I very carefully listened and when Mr. Flynn asked him if anything like that was ever said before and he said, "No," I presumed he had either forgotten it or he was testifying to something he thought hadn't taken place, didn't remember, and I would have a right to put on the evidence of this man. There is no point in asking Mr. Verdugo that as I [164] saw it.

The Court: As a basis of his admission of his impeachment, you can't go into it unless you gave Mr. Verdugo an opportunity by directing his attention to the particular time and place and conversation. The objection will be sustained.

Q. I take it, Mr. Calderon, then that you did discuss this matter of cutting down the receipts given to your customers, you did discuss that with Mr. Verdugo? A. I did, sir.

Q. In what year?

A. 1944. That was the first time I asked him about that.

Q. Now then, Mr. Calderon, when was the first time that anyone brought to your attention your income tax returns might be faulty?

A. When was the first time?

Q. That is right.

(Testimony of Edward B. Calderon.)

A. I didn't get that question again.

Q. Well, who first called to your attention the fact that the Government might claim more tax than you had paid them?

A. Nobody did, there was anybody that called it to my attention. The first time that I noticed, that I more or less had an idea that I should have paid taxes was the first year Mr. Verdugo told me I didn't have to pay any taxes.

Q. He told you you didn't have to pay any at all?

A. That is right. [165]

Q. Do you remember what year that was?

A. I believe that was for the year 1946.

Q. What year did the conversation take place then?

A. That took place at his house.

Q. In the spring of 1947?

A. In March 1947, yes, for the year 1946.

Q. What was said at that time and place?

A. He called me up about March the 12th and he said he would like for me to come up, he would like to ask me a lot of questions on my papers, on my returns. So I went up there that night, March the 12th, about eight o'clock. When I walked in he had a big stack of invoices and cancelled checks and other paper on top of his desk. He says, "I am going to have to ask a lot of questions. You remember what this invoice was for? Do you remember whether the serial number of the machines or do you remember what machines you returned?" I couldn't remember. I told him some of them I probably could. Then he said, "Well, do the best

(Testimony of Edward B. Calderon.)

you can anyway. It is all right." I told him, "All right." Then he brought out the checks, a lot of checks he had there on my cancelled checks for this whole year, some of them, he didn't show them all, but some of them. He told me, "Do you remember what this is for?" I told him, "Gene, I have been sick in bed most of the year on account of my leg. I can't tell you everything because I can't remember it. I know you told me to do that [166] and that is the way I done it." He said, "Well, do the best you can, it is all right." Well, I did the best I could to remember all those invoices he had there. Then he said, "How about your rent?" He said, "How much do you charge for this place?" And he put it down. "How much do you charge for this other place?" He would put it down and multiply it by twelve. And on down the different places I had for rent there. He said, "That is all right, I have everything now." Of course it took about an hour or so on these things, maybe more than an hour. He said, "I will call you up. I have to rearrange these, fix it up, and I will call you up as soon as I get it straightened out." On March 15th he called me up and he said, "I got everything all set." So I went up there. He had a long table of numbers he had and he brought out what he called a breakdown, a big sheet, then he started telling me so much for taxes, so much for insurance and all those. He says, "What do you think?" I said, "I don't know, Gene, I can't understand it. I figure you are the one." He said, "You turned in every-

(Testimony of Edward B. Calderon.)

thing you have done, everything the way I told you?" I said, "Yes, I have done everything the way you told me." He got hold of my income tax papers and looked through them and he began asking me how many kids I have. When he got through, "You think that is all right?" I told him, "I don't know, I can't understand it."

Q. Did you owe any tax as a result of it? [167]

A. After he told me that I said, "I don't understand it. All right then, how much taxes do I have to pay?" I asked him. He said, "No, you don't have to pay any taxes." I said, "I don't understand it. I don't know, maybe it is right. Of course I know I have had hospital bills."

Q. What?

A. I had hospital bills. I had been in bed. I didn't know much about sending these invoices up there. I thought, "Well, as long as I knew I turned in everything he told me I figured that was right then." But I did ask him if I did owe any taxes and that is the first time it came to me.

Q. All right, then, after that did Mr. Webb or Mr. Tucker talk to you about your income taxes?

A. I don't know what you mean.

Q. When did Mr. Tucker and Mr. Webb talk to you about your taxes? When did you first know Mr. Tucker and Mr. Webb were after you, in other words? What happened?

A. The first time they were after me?

Q. That is right.

(Testimony of Edward B. Calderon.)

A. You mean the first time when they started to investigate me?

Q. That is right.

A. Mr. Tucker—first Mr. Lewis sent me a letter, the revenue man there.

Q. Do you remember what year that was in?

A. Yes, that was in 1950. He sent me a notice to go to his office, that he wanted to talk to me about this invoices and papers. So I went up there and he gave me his list of invoices and I don't remember, some other stuff he wanted me to get ready for him. I went back. I didn't know just where to get that data because I didn't know where Mr. Verdugo had it.

Q. Did Mr. Lewis tell you at that time something was wrong with your income taxes?

A. No, he didn't tell me. He told me to get these invoices and stuff ready.

Q. Who did you get them from?

A. I called Gene, Mr. Verdugo, and told him what he wanted. I told him I didn't know where to get it and I would pay him if he would help me get that stuff. He said he would be down that night and we would get these invoices and other stuff he wanted. He did come down that night and we went to looking for these 1946 invoices which he had had at his home. So we looked for those three boxes of invoices we had brought down from his home into my place of business there. We went through there and we kept looking for this 1946 invoices—some of these 1946 invoices he wanted—

(Testimony of Edward B. Calderon.)

and we couldn't find them. I said, "I know I remember I wrapped them up, they were tied up in a string and put them in this box." I said, "I know the boxes are still there, I haven't touched them." That [169] is the reason I thought we had better do it. I said, "We will have to turn in what we have here." So we were going ahead through all these invoices, what Mr. Lewis wanted among those. I noticed some of those invoices that had an "E." I said, "Why do you initial some of these things and some you don't?" He said, "No, that is not an initial, that means 'entered'." I said, "I noticed some of those don't have that 'E' on there." He said, "I notice that too. Well, we have to turn them in anyway." We got that ready for Mr. Lewis.

Q. You took that up to Mr. Lewis?

A. We got the stuff ready. We called Mr. Lewis like he told me. Mr. Lewis came down, he glanced at them and he said, "I haven't got time to check them over. Besides, you wouldn't know anything about it. Take them down to the lumber yard to Gene and I will go down and he can explain to me about the invoices." I did that, I took them down to the lumber yard and left them with Mr. Verdugo.

Q. When did you first see Mr. Tucker and Mr. Webb?

A. Mr. Verdugo called me up and said a fellow by the name of Webb had been down there and he wanted to see me over at the Post Office Building, he was going to give me a list of some more stuff he wanted. I went to the Post Office Building that

(Testimony of Edward B. Calderon.)

day. As I walked in Mr. Lewis was in one room, Mr. Webb was in the other. Of course I knew Mr. Lewis. I saluted him and he called my attention this was Mr. Webb in the other room. [170] Mr. Webb, I met him, shook hands with him. He told me what he wanted me to do.

Q. What did he want then?

A. He wanted some more reports for 1944, '45—'46, I mean—and 1949, some more data he wanted me to get for him.

Q. Did you get it for him?

A. He made me a list of what he wanted up there. That night of course I went to Mr. Verdugo again and told him we had to get all this other stuff for him. So that night Mr. Verdugo called me up and he said, "I want to see you." After I got off work I went up there and I said, "Look, Gene, what is going on here? I don't know, I don't understand. I have done everything the way you have told me." And he said, "I don't know what these fellows want now." So I said, "But after all, you said you had done your job. I know I have done mine the way you told me. So all we have to do is turn these books over to them. After all, they are the Government."

Q. Speak louder.

A. I told him, "After all, there is nothing wrong. I have done everything the way you told me and they were the Government and I want to do everything right. I always did." So we went to work that night and got all this other stuff.

(Testimony of Edward B. Calderon.)

Q. When did you first see Mr. Tucker?

A. Mr. Verdugo then called me up. Mr. Tucker had been down there, a gentleman by the name of Tucker, and he wanted to see [171] me over at the Post Office Building. So I went up there when Mr. Tucker was there and Mr. Webb.

Q. Mr. Verdugo there too?

A. Not that time, no. So they began to ask me a lot of questions about how much I gave my dad and mother.

Q. About what?

A. About how much I gave my family.

Q. Yes.

A. I can't recall, but there were a lot of other questions asked me by them. I furnished everything they wanted. If I am not mistaken at that time they asked me where I had gotten this money and if I had inherited some money or if I had gambled or if I had played the stock market. I told them, "No, I have just made it with my machines and all that. I have broken my back doing it, but I have done it. I have been working maybe eighteen or sixteen hours a day, but I have done it myself."

Q. Did they tell you that they were going to make a case against you for income tax fraud?

A. Not at that time.

Q. Now then, you saw them three or four more times in the course of these conversations?

A. I saw Mr. Tucker, I guess, three, and Mr. Webb four times.

Q. Did you always do just exactly what they

(Testimony of Edward B. Calderon.)

wanted you to do? [172] A. Yes, I did.

Q. Give them all the information they wanted?

A. Yes, sir.

Q. Did they ever ask you, Mr. Calderon, how much money you kept in your safe?

A. No, they never did, sir.

Q. They did ask you how much money you kept in your pocket?

A. I don't remember them asking me how much money I had in my pocket.

Q. Now, remember the day they brought you up there and showed you a piece of paper with a lot of figures on it? A. Yes, that was the 2nd.

Q. Was Mr. Verdugo there at that time?

A. Not in the morning. He was in the afternoon.

Q. You went up early in the morning and were there all day?

A. I was there early in the morning, yes.

Q. Did they discuss all the figures that were on the sheet with you?

A. They showed me all the figures and went through all of them with the cancelled checks year to year, yes.

Q. Did you understand what they were doing, what they were talking about?

A. No, sir, I didn't understand.

Q. Did either one of them finally ask you to sign that statement, that bunch of figures? [173]

A. I believe Mr. Tucker did.

Q. What did you say?

(Testimony of Edward B. Calderon.)

A. I told him I didn't know whether it was right or not but my bookkeeper said that was about right and he said it was right but I didn't know whether it was right or not.

Q. What did he say?

A. He said, "Well, whether you sign it or don't sign it I am going to send it in anyway." I don't remember whether he told me anything about my Constitutional rights.

Q. Because he said it was right you signed it?

A. Well, yes. Mr. Verdugo said it was right.

Q. Mr. Calderon, have you ever deliberately failed to pay any of your taxes or any of your obligations you have ever had in your life?

A. No, sir, I have always wanted to pay everything that I owed.

Q. When you signed these income tax returns that Mr. Verdugo prepared for you did you have any idea that they were wrong in any particular?

A. No, sir, I had no idea because he said they were right.

Q. Mr. Verdugo said something about having a conversation with you about some receipt books that were lost. Do you remember that?

A. Mr. Verdugo?

Q. Yes. He said that you and he had a conversation about [174] some receipt books that were lost.

A. Oh, that was in 1950, I believe.

Q. Was that after this investigation started?

A. That was after, yes, 1950.

Q. As a result of that conversation what hap-

(Testimony of Edward B. Calderon.)

pened with these receipt books, did you number them?

A. He suggested we put a number on them. So he made that practice of putting a number on them. I also had an extra man I had hired so as to see if I could get better tab on my business. I asked them every time they get a book they put on a number according to each book. Before I knew it they had three or four books out that didn't have any number on them. I called their attention again, told them Mr. Verdugo wanted us to go ahead and number these books. Before I knew it again one of those numbered books was missing. I asked the boys where was this book and nobody seemed to know about it. It was maybe two or three weeks, I don't know now, one of the boys brought that particular book. He said he had forgotten it back in his hip pocket, put it away in the closet. Again later on we missed another of those numbered books, nobody seemed to know anything about it. Finally a place in Naco called up and said one of those books they had checked with was laying up there back of the counter. I don't remember just how long it was since we had lost it.

Q. As I take it then, these receipt books, except the [175] numbering, were the same procedure you had been following ever since you started in business?

A. Yes, sir.

Q. In a period of about three or four months you lost two of them, is that right?

(Testimony of Edward B. Calderon.)

A. Yes, more or less, after he told us to number them.

Q. Did you have a discussion with Mr. Verdugo about how much might be involved in each of these books?

A. Yes, we did.

Q. What was that?

Mr. Flynn: We object to that as self-serving.

The Court: No, he may answer. I believe Mr. Verdugo testified about that.

Mr. Herring: That is right.

A. We figured there was eighteen hundred or two thousand dollars would be put into one of those books.

Q. That it would make that much difference in the return of your income if you lost one of those books?

A. Yes. Again during 1950, as close as we followed those books, we lost one during that year and Mr. Verdugo said, "Well, all you have to do now is get an average from one month to the other and you can tell how much it is."

Q. During these years, where was the passbook for your savings account kept?

A. When I first turned it over to Mr. Speer he kept it on [176] top of his desk. When Mr. Speer turned it over to Gene we put the books on top of the desk and my checkbook and savings account book and my other account book in my drawer in the desk.

Q. Who had access to those books all the time?

A. He would come over. He just told me to

(Testimony of Edward B. Calderon.)

leave everything right there. I told him where I was going to put them.

Mr. Herring: That is all.

Cross Examination

Q. (By Mr. Flynn): Mr. Calderon, you testified on direct examination in 1943 you had about thirteen machines at the Air Base. What kind of machines were those, regular slot machines?

A. Slot machines, yes.

Q. You had about thirty-four music machines. Where were they located?

A. In various parts of town and some at the Air Base.

Q. You had about twenty pinball machines. Where were they located?

A. Various parts of town and some at the Air Base.

Q. Did you acquire any more machines in 1944?

A. Not too many. I would say very few.

Q. About 1945 did you acquire any machines?

A. We couldn't get many machines at all, just a few.

Q. You acquired some in 1946? [177]

A. Yes, we did.

Q. When did the Air Base close down and the machines taken out of there?

A. About the end, maybe about the beginning of 1946.

Q. Did you take your machines out of there then? A. Yes, we did.

(Testimony of Edward B. Calderon.)

Q. In addition to that you bought a lot more machines in 1946?

A. We replaced a lot of equipment in 1946, yes.

Q. How many did you buy in 1946?

A. I have no idea. We had to replace quite a few of them.

Q. Would you say about sixteen thousand dollars worth? A. Yes, I imagine so, sir.

Q. Where did you put those machines?

A. Replaced them around town.

Q. Around town? A. Yes.

Q. That was after business had dropped off and the Air Base had closed you were still buying machines? A. Yes, sir.

Q. Did you buy any machines in 1947?

A. I probably bought a few of them, sir.

Q. You say at the end of the year 1945 you estimate you must have had about sixteen thousand dollars in your safe in cash?

A. More or less, yes, sir. [178]

Q. Did you count it?

A. No, sir, I wouldn't say I did.

Q. Where did you acquire that sixteen thousand dollars?

A. This machines business.

Q. Acquire that in 1945?

A. Yes, all during those years.

Q. How much did you have at the end of 1944?

A. How much?

Q. Yes. At the beginning of 1945 how much did you have in your safe?

(Testimony of Edward B. Calderon.)

A. Well, I wouldn't exactly know, I could have had maybe twelve or thirteen thousand dollars.

Q. You didn't buy any machines in 1944?

A. No, not to amount to anything.

Q. You are just estimating that, you don't have any personal recollection at this time or know exactly how much money you had in your safe at any time, do you?

A. Sometimes I would count it, maybe once or twice in a year.

Q. You would deposit it off and on in your savings account and your checking account, wouldn't you?

A. Yes, I did, sir.

Q. Now, you think this sixteen thousand dollars you think you had in your safe at the end of the year 1945, that was accumulated over what period of time?

A. Between the years 1939 up to that time, I imagine. [179]

Q. You kept adding to it all the time?

A. You know, more or less.

Q. You took some out? A. Yes, sir.

Q. Do you know how much you made in 1945, how much you accumulated in 1945?

A. During that year?

Q. Yes.

A. I didn't know for any certain year, I have no idea.

Q. You testified on direct examination that was a good year, business was good.

A. From 1942 up through 1945, yes.

(Testimony of Edward B. Calderon.)

Q. And during the whole year 1945?

A. That probably was a fair year. That was the end of the war.

Q. Do you know how much you returned on your income for the year 1945?

A. No, I don't, sir.

Q. Do you recall that?

A. I didn't get your question.

Q. How much did you show on your income tax return for 1945, your receipts during that year, your income for 1945?

Mr. Herring: Your Honor, it is quite obviously impossible for the witness to remember a detail like that. The returns are in, they are the best evidence in any event. I object on [180] the ground the income tax returns themselves would be the best evidence.

The Court: This is in regard to the amount he returned in a particular year?

Mr. Flynn: Yes.

The Court: The return is the best evidence.

Mr. Flynn: May this be marked for identification.

(Government's Exhibit 12 marked for identification.)

Q. Mr. Calderon, I show you Government's Exhibit 12 for identification and call your attention to the signature there and ask you if you signed the original of that document?

A. Yes, I did, sir.

(Testimony of Edward B. Calderon.)

Q. Is that a copy of the income tax return you made for the year 1945?

Mr. Herring: Your Honor, the income tax return for 1945 is in evidence, the original.

Mr. Flynn: No.

Mr. Herring: I see.

A. Yes, sir.

Q. That is a copy of the return you made in 1945? A. Yes, sir.

Mr. Flynn: We offer it in evidence.

Mr. Herring: No objection.

The Court: It may be admitted.

(Government's Exhibit 12 in evidence.) [181]

Q. Mr. Calderon, calling your attention to the figures on this return which you say you made for 1945, I will ask you if that net profit, \$2,336.20, correctly reflected your net income for that year to the best of your knowledge.

Mr. Herring: Your Honor, I fail to see the relevancy of that. I don't see how that is relevant to this investigation at all in any way, shape or form. The man has testified Mr. Verdugo made out these accounts, these returns. He has no way of knowing whether it is correct. Probably it isn't, but whether it is or not he is not on trial for this.

The Court: This is offered for the limited purpose the witness has testified as to the fact 1945 was a good year, the years 1942 to 1945 were good years. Now his return is introduced here in evidence and has a bearing on that testimony. In other words, the jury will give it what weight it should

(Testimony of Edward B. Calderon.)

have as opposed to his testimony that these were good years. There is no question about the accuracy or any liability for this return, any criminal liability for this return.

Mr. Herring: He is not on trial for the year 1945 or any other year other than '46, '47, '49 and '49.

The Court: That is right.

Q. Would you answer that question?

A. Mr. Verdugo told me that was right.

Q. As far as you know it was?

A. As I was told, yes. [182]

Q. As far as you know this correctly reflects your gross income for that year, the deductions and everything?

Mr. Herring: I think, your Honor, the witness has answered the question. I object to it on that ground. He says Mr. Verdugo told him that was right.

Mr. Flynn: I want to ask a question as to the entire report.

The Court: He may answer the question.

A. As I was told, yes.

Q. As far as you know that was a correct return of your income and your deductions?

A. Yes, sir, as far as I was told, yes.

Mr. Flynn: May this be marked for identification.

(Government's Exhibit 13 marked for identification.)

Q. I show you Government's Exhibit 13 for

(Testimony of Edward B. Calderon.)

identification, which is a photostat, call your attention to the signatures there and ask you if that is a photostat of your signature which you placed on the original of that document. A. Yes, sir.

Q. Is that a copy of the return which you made, income tax return for the calendar year 1944?

A. Which Mr. Verdugo made for me.

Q. That was the one you signed and filed with Internal Revenue? A. Yes, sir. [183]

Mr. Flynn: We offer it in evidence.

Mr. Richey: No objection.

The Court: It may be admitted.

(Government's Exhibit 13 in evidence.)

Q. Mr. Calderon, this Government's Exhibit 13 in evidence which you say is a photostatic copy of an income tax return you made for the calendar year 1944, I call your attention to the item on the second page of this exhibit entitled "Total Receipts" of \$9,266.83. I will ask you if you could state whether or not to the best of your knowledge that was a correct statement of your receipts for that year. A. To the best of my knowledge?

Q. Yes.

A. Yes, to the best of my knowledge.

Q. Your net income for that year, your taxable income, calling your attention to the item \$4,162.50, to the best of your knowledge was that a correct report of your net and taxable income for that year?

A. I don't understand this, Mr. Herring.

Mr. Herring: I don't think Mr. Flynn does either, your Honor. I think the question is entirely

(Testimony of Edward B. Calderon.)

inadvertent but I want to point out to Mr. Flynn—

Mr. Flynn: You don't need to point out anything to me. I am talking to the witness. I want to know if this item which purports to report your net taxable income, does that [184] reflect your statement?

Mr. Herring: In other words, was that what Mr. Verdugo told you?

Mr. Flynn: Will you let me examine the witness, please.

The Court: Don't interrupt him.

A. I don't understand those.

Q. You don't understand? A. No, sir.

Q. Now, Mr. Calderon, when you were in the Post Office Building there in Douglas and they showed you these figures, you testified to that on direct examination, did they go over these figures item by item and tell you what they represented? They went over them, for instance, they pointed out to you for the year 1945, for instance, that you had in your checking account in the Bank of Douglas \$688.00, did they point out to you these figures represented what you had in your checking account?

A. They pointed out to me but I didn't understand very well.

Q. They pointed out to you all the other bank deposits shown on this? A. Yes, sir.

Q. Did they also point out to you the item United States Treasury Bonds in the sum of

(Testimony of Edward B. Calderon.)

\$5,181.25, represented the bonds and reflected the amount of bonds you held at that time?

A. They pointed everything out at that time.

Q. Did they also discuss with you the value of your furniture and fixtures which were reflected in those figures at about \$944, was that discussed, pointed out to you?

A. Although I didn't understand it, they did point it out.

Q. When they told you your furniture and fixtures were valued at \$944 you didn't know what they were talking about, is that right?

A. I don't know anything about value.

Q. When they got down to equipment and machinery which referred to the machines you had, and they told you these figures for the year 1945, the end of 1945, show that you had machines at that time of a value of \$8,000, did you understand that?

A. They showed me, but I couldn't put those things together.

Q. When they told you your automobiles you owned at that time were valued at \$1,855, did you understand that?

A. They pointed it out to me.

Q. They pointed that out?

A. Yes.

Q. When they told you you owned land of the value of \$2,300, did you understand that?

A. Yes.

Q. And that you had buildings on these differ-

(Testimony of Edward B. Calderon.)

ent pieces of land that you owned of the value of \$8,120, you understood that? [186]

A. They pointed that out to me.

Q. Now, they went through the other items on this list—

Mr. Herring: Now, your Honor, quite apparently Mr. Flynn is going to continue to testify from some foolscap sheet he has in front of him. I think if he is it should be put in evidence.

Mr. Flynn: I don't have to put my notes in evidence, your Honor. I have notes on here I am not going to put in evidence that I am going to ask him about.

Mr. Herring: I don't believe Mr. Flynn is testifying from his notes. I think they should be put in evidence because quite apparently no one, including any member of the jury, can carry these figures in his head. If Mr. Flynn is going to testify from them with great celerity I think they should be where everybody can see them, in an exhibit.

Mr. Flynn: These figures have all been testified to, your Honor.

The Court: The objection will be overruled.

Q. They also discussed with you the amount of money you spent for living expenses that year, didn't they? A. At this particular time?

Q. When these figures were shown to you in the office that day.

A. That wasn't discussed, it was just shown to me.

Q. They didn't tell you what it was?

(Testimony of Edward B. Calderon.)

A. No. [187]

Q. They didn't tell you this item in here of living expenses, \$3,000, was what you told them you gave your wife, \$250 a month, was that explained to you?

A. Yes, I see that now.

Q. Did they also point out to you there was an item in here of doctor bills, they got the information from you?

The Court: Just a moment, Mr. Flynn. When you say "in here"—

Mr. Flynn: I will correct that, your Honor. That is correct.

Q. When they told you on those figures they showed you in that office that day there was an item of doctor bills you paid, they got that information from you, didn't they, how much doctor bills you paid that year?

A. They didn't get that information from me, no, sir.

Q. Do you know where they got it?

A. They must have got it from the books, I guess.

Q. You didn't tell them how much you paid?

A. I don't know.

Q. Did they tell you how much the books showed you paid?

A. They didn't tell me anything about the books, no. They showed me this paper here, yes, sir.

Q. They showed you a paper up there with figures on it?

A. Yes, sir.

(Testimony of Edward B. Calderon.)

Q. They went through those figures item by item? [188]

A. They did. They pointed out both to my book-keeper and me, yes.

Q. Now, Mr. Calderon, do you recall a conversation with Mr. Verdugo some time in the early part of 1950, you heard him testify in Court this morning, of a conversation after this investigation started? Do you recall having a conversation with Mr. Verdugo in the early part of 1950 after this investigation started relative to your receipts from machines from the different locations?

A. About him telling me to number those books?

Q. No, this was after this investigation started, 1950.

A. Yes, 1950.

Q. You had a conversation with him?

A. About the books, yes, sir.

Q. Did you have a conversation with him at that time about these people who had these machines in their locations asking you not to return all the receipts that you received from them, all the money you received?

A. In 1950?

Q. Yes.

A. I don't recall, sir.

Q. You don't recall ever having such a conversation with him in 1950?

A. In 1950, no.

Q. You heard Mr. Verdugo testify to that this morning? [189]

A. I don't remember, sir.

Q. You heard him testify some time in 1950 he had a conversation in which you came to him and told him that these people had asked you not to

(Testimony of Edward B. Calderon.)

report all the money you received from them? Did you ever have such a conversation?

A. I had a conversation before 1950.

Q. Not in 1950?

A. Not in 1950, except these books that were marked. Those were the ones he told me about.

Q. Now, how many machines did you have operating in 1947 and 1948?

A. Well, I had less machines on account I had pulled out the ones from the Air Base, so that must have been maybe thirty-three or maybe twenty-eight music boxes. I had no way of telling.

Q. Did you have any pinball machines?

A. I had no way to know, but I had——

Q. Did you have more——

A. No, not more than when the Air Base was there.

Q. Did you have more than you had in 1945?

A. No, sir, I didn't.

Q. What did you do with those machines you bought in 1946, those sixteen thousand dollars worth of machines, what did you do with those?

A. We went around after they are obsolete, so old. [190]

Q. You don't know how many machines you had in 1947 or 1948?

A. Well, from what I can figure I had a little less at the Air Base, maybe twenty-eight or thirty machines.

Q. Those music machines?

(Testimony of Edward B. Calderon.)

A. I would say about twenty-seven music machines, and so on.

Q. How many pinball machines in 1948?

A. In 1948, pinballs did you say?

Q. That is right.

A. I imagine about twenty-five or twenty.

Q. You testified on direct examination in 1943 you had thirty-four music machines and about twenty pinball machines? A. That is right.

Q. So you had about as many or more than that in 1948?

A. But the machines weren't making as much money in 1948 as they were in 1944.

Q. They weren't running as much in 1946 either, were they? A. They had dropped a little.

Q. But you bought sixteen thousand dollars worth that year?

A. Yes, to replace my equipment.

Mr. Flynn: May we have a recess? I think I am about through, your Honor.

The Court: Very well. At this time we will take a recess. I think we had better recess for about twenty minutes and during that time I can talk to counsel about instructions. We will stand at recess, ladies and gentlemen, for twenty [191] minutes.

(Recess.)

Q. (By Mr. Flynn): Mr. Calderon, at the prior trial in this case you were sworn and testified in this Court? A. I did, sir.

Q. At that time on cross examination when you

(Testimony of Edward B. Calderon.)

were being questioned about 1946 if the following questions were asked you to which you made the following answers——

Mr. Herring: What page?

Mr. Flynn: 174.

“Question: Now at that time then did you continue to keep the money at home in your trunk?

“Answer: No, I put it in the safe.”

Did you make that answer to that question last time, do you recall?

A. I didn't get that question again, sir.

Q. I am asking you about your testimony at the other trial, Mr. Calderon, at which you were asked:

“Question: Now at that time then did you continue to keep your money at home in your trunk?”

Your answer was:

“Answer: No, I put it in the safe.”

The the following question was asked you:

“Question: How much money did you have in there from time to time, Eddie? [192]

“Answer: In the safe I didn't count it very often, just from time to time I would count it and there would be, oh, from two—maybe eight or nine thousand dollars, I imagine. I didn't count it all, just the paper money, but I had some change in there.”

You made that answer?

A. At that time, sir, during that trial——

Q. I am asking you if you testified to that at the last trial, then you can explain it afterwards.

(Testimony of Edward B. Calderon.)

A. Yes, I did, sir.

Mr. Flynn: That is all.

Mr. Herring: Mr. Flynn, might I have that Net Worth Statement you have been testifying from—excuse me, you have been reading from?

Redirect Examination

Q. (By Mr. Herring): Did you sign this, Eddie, is this your signature?

A. Yes, Mr. Herring.

Q. Is this the paper you signed for Mr. Webb and Mr. Tucker up there in the Post Office Building about the 2nd of August 1950?

A. Yes, sir.

Q. Is this what they showed you and this is what they did all that reading of figures to you from? A. Yes, sir. [193]

Mr. Herring: I offer it in evidence.

Mr. Flynn: No objection.

The Court: It may be admitted.

(Defendant's Exhibit B in evidence.)

Mr. Herring: May I have Government's Exhibit 10, that first photostatic income tax return?

Q. Now, Mr. Calderon, you were handed this exhibit by Mr. Flynn, being Government's Exhibit 12 in evidence, being a photostatic copy of your income tax return for 1945 and you said that was your signature on there, that is a photostatic copy of it, didn't you? A. Yes, sir.

Q. I call your attention to that exhibit. The first page of that exhibit shows you have a net

(Testimony of Edward B. Calderon.)

profit of \$2,336.20. That refers to the operation of the Coronado Cafe, doesn't it?

A. Yes, sir, that is right.

Q. There is another page of that exhibit which has to do with your music machine business, isn't there, Mr. Calderon? A. Yes, Mr. Herring.

Q. Both of them together made up your income for that year? A. Yes.

Q. Mr. Calderon, you started to explain something to Mr. Flynn when he read the questions and answers out of that previous trial from that book?

A. Just while ago, yes, I did. [194]

Q. You started to explain to him that you had two to nine to ten thousand dollars in the other trial and saying you might have had around sixteen thousand in the safe in this trial?

A. Yes, sir.

Q. Go ahead and finish your explanation.

A. Since that trial I began to think and I know definitely I hadn't made any deposits in my bank during those years, so I know now that I could have accumulated that much because I know I didn't have it in my bank. I put it mostly in my safe.

Q. And you had not been buying any machines as you stated?

A. We couldn't buy any machines, no, sir.

Q. Business was good?

A. Very good. Those were my best years in operation.

Q. Also, Mr. Calderon, in 1946 when you were

(Testimony of Edward B. Calderon.)

able to buy machines did you just buy machines and add them on to the ones you had or what did you do with your old ones?

A. Some of those old ones were traded in to the companies.

Q. Yes. At the end of that period, 1945 and beginning of 1946, what was the condition of your equipment?

A. It was very obsolete. It was old machines. We had to replace them.

Q. I see. Prices for equipment were high too, were they not? A. In 1946?

Q. Yes. [195]

A. Yes, sir, they went up considerably high.
Mr. Herring: That is all.

Recross Examination

Q. (By Mr. Flynn): You are sure this Net Worth Statement for 1946 showing you spent sixteen thousand dollars for machines had nothing to do with your changing your testimony about the amount of money you had in your safe? You didn't change your testimony merely because there was an item in here of sixteen thousand dollars in 1946 you spent for machines?

A. I know, I realize by that time since that trial that I must have had that money in my safe.

Q. You found out from this Statement you spent sixteen thousand dollars in 1946—

A. I can't understand the Statement.

Q. You found out in Court here from this State-

(Testimony of Edward B. Calderon.)

ment represented you had sixteen thousand dollars you spent for equipment in 1946, didn't you?

A. Yes, that was read to me.

Q. That was when you decided you must have had sixteen thousand dollars in the bank or in your safe rather on the 1st of the year?

A. I didn't decide it, sir. I knew——

Q. How did you figure it out?

A. Because we had very good years all from 1939 up to 1946, [196] sir.

Mr. Flynn: That is all.

Mr. Herring: No questions. The defense rests.

Mr. Flynn: The Government rests.

Mr. Herring: I would like at this time to renew my motion I made at the close of the Government's case and move that the case be dismissed.

The Court: The motion will be denied.

You may proceed with the argument.

(Arguments of counsel.)

The Court: Ladies and gentlemen, the evidence has been submitted to you now and counsel have argued the case. At this time it is the Court's duty to instruct you as to the law.

It is your duty as jurors to follow the law as stated in these instructions and to apply the law as given to you to the facts as you find them from the evidence before you.

You are not in considering the instructions and applying them to single out any single instruction, but you are to take the instructions of the Court as a whole as being the law of the case.

Regardless of any opinion you may have as to what the law ought to be it would be a violation of your duty to base a verdict upon any other view of the law than that given you by the Court in the instructions.

To begin with, you are instructed that an indictment— [197] there is an indictment in this case—is only a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilt. The law presumes a defendant to be innocent of any crime. This presumption of innocence continues throughout the trial and has the weight and effect of evidence in favor of the accused. You must consider the evidence in light of this presumption. The presumption of innocence is sufficient to acquit a defendant unless the presumption is outweighed by evidence satisfying the jury beyond a reasonable doubt of the guilt of the defendant.

Reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such that you would be willing to rely and act upon it in the most important of your own affairs. The defendant is not to be convicted on mere suspicion or conjecture. A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence.

Since the burden is upon the prosecution for the

Government to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, the defendant has the right to rely upon a failure of the Government to establish such proof. The defendant may also rely on evidence [198] brought out on cross examination of witnesses for the prosecution.

The law does not impose upon the defendant the duty of producing any evidence.

A reasonable doubt exists in any case when, after careful and impartial consideration of all of the evidence, the jurors do not feel satisfied to a moral certainty that a defendant is guilty of the charge.

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence, such as the testimony of an eye witness. The other is circumstantial evidence, the proof of a chain of circumstances pointing to the commission of the offense. As a general rule the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

In order to justify a verdict of guilty based in all or in part upon circumstantial evidence the facts in the chain of circumstances shown by the evidence must be consistent with the guilt of the accused and inconsistent with every reasonable supposition of innocence. If the facts and circumstances shown by the evidence are as consistent

with innocence as with guilt, the jury should acquit the defendant.

You as jurors are the sole judges of the credibility of [199] the witnesses and the weight their testimony deserves. A witness is presumed to speak the truth. This presumption may be outweighed by the manner in which the witness testifies or the character of the testimony given or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other witnesses. Inconsistencies or discrepancies in the testimony of the witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or transaction may see or hear differently and innocent misrecollection like failure of recollection is not an uncommon experience. In weighing the effect of the discrepancy consider whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or willful falsehood. If you find the presumption of truthfulness to be outweighed as to any witness, you will

give the testimony of that witness such credibility, if any, as you [200] may think it deserves.

The defendant who wishes to testify is a competent witness and the defendant's testimony is to be judged in the same way as that of any other witness. All evidence relating to any admission or incriminatory statement claimed to have been made by the defendant outside the Court should be considered with caution and weighed with great care. Where a defendant has offered evidence of good general reputation for truth and veracity or honesty and integrity or as a law-abiding citizen, the jury should consider such evidence along with all the other evidence in the case. Evidence of a defendant's reputation as to those traits of character ordinarily involved in the commission of the crime charged may give rise to a reasonable doubt, since the jury may think it improbable that a person of good character in respect to those traits would commit such a crime.

In every crime there must exist a union or joint operation of act and intent. The burden is always upon the prosecution to prove both the act and the intent beyond a reasonable doubt. Section 145(b) of Title 26 of the United States Code—and that is what is commonly called the Internal Revenue Code—provides in part that any person who willfully attempts in any manner to evade or defeat any tax imposed by this Chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony. Each of the four [201] counts of the indictment in this case charges the

defendant with a separate violation of the statute which I have just read to you.

It is charged in Count One of the indictment that on or about the 10th day of July, 1947, in this District the defendant Edward Calderon willfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1946 by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Arizona a false and fraudulent joint income tax return on behalf of himself and his said wife, for it was stated that their net income for said calendar year was the sum of \$3,836.68 and that the amount due and owing thereon was the sum of no dollars, whereas the defendant then well knew that their joint net income for the calendar year 1946 was the sum of \$24,855.49, upon which income there was owing the United States of America an income tax of \$7,352.12.

I have stated in detail the first count of the indictment, and that involves the return for the year 1946 as filed within the year 1947.

The three remaining counts involved succeeding years, in other words the year 1947 the return for which was filed in '48, the year 1948 the return for which was filed in '49, and the year 1949 for which the return was filed in 1950. [202] Except for the amounts—and you will remember that the indictment was read to you—except for amounts the charge to each year is the same. In other words, in

an attempt to willfully evade and defeat the tax due from the defendant and his wife he filed false and fraudulent income tax returns in which he stated his income to be a certain amount and that there was no tax due thereon, when in truth and fact, as he knew, his income was a different amount, a greater amount and there was an amount of tax due. Those are in essence the charges in each of the several counts.

Now you are instructed—and this instruction is important because it will tell you what elements there are in the offense charged in each count, and I am here attempting to tell you what the Government must prove to you beyond a reasonable doubt with reference to each count of the indictment—you are instructed that there are three essential elements of the offense which is charged against the defendant in each count of the indictment in this case.

First, that the defendant filed or caused to be filed with the Collector of Internal Revenue for this District as charged in the indictment a joint income tax return for himself and his wife in which return he understated the income of himself and his wife for the year covered by the return, and stated that there was no income tax due from the defendant and his wife to the United States of America for the year covered [293] by the return. That is the first element.

The second element is that in truth and in fact the joint net income of the defendant and his wife for the year covered by the return filed or caused

to be filed by the defendant was an amount substantially in excess of the amount stated in the return, and that in truth and in fact there was a substantial amount of income tax owing from the defendant and his wife to the United States of America on account of their true joint income in the year covered by the return, all of which was known to the defendant at the time he filed the income tax return or caused it to be filed. In other words, that in truth and in fact the income, joint net income, of the defendant and his wife was in excess of that stated in his return and there was a substantial amount of tax due to the United States and the defendant knew those things when he filed the return. That is the second element.

Third, that the defendant willfully and knowingly attempted by means of the income tax return filed or caused to be filed by him to defeat and evade all or substantial parts of the income tax which was owing from the defendant and his wife to the United States of America for the year covered by the return.

As I have stated before, the burden is upon the Government to prove beyond all reasonable doubt every essential element of the crimes charged against the defendant by the indictment [204] in this case. In other words, as to any particular count of the indictment.

You are instructed that before you would be justified in returning a verdict of guilty upon such count the Government must have satisfied you from the evidence beyond all reasonable doubt of

the existence of each of the elements constituting the offense charged by such count, as I have stated those elements to you.

I have instructed you that one of the essential elements of the charge made by each count of the information to be proved by the Government beyond a reasonable doubt is that a substantial amount of tax was in truth and in fact due from the defendant and his wife to the Government. Now it is not necessary that the Government show that the defendant and his wife owed the exact amount of tax stated in the indictment, but it is necessary that the Government show beyond a reasonable doubt that a substantial amount of tax was in truth and in fact due to the Government from the defendant and his wife.

You will note that some of the acts charged in the several counts of the indictment are alleged to have been done by the defendant knowingly and willfully. I instruct you that an act is done knowingly if done voluntarily and purposely and not because of mistake or inadvertence or other innocent reason. I instruct you also that an act is done willfully if it is done voluntarily and purposely and with specific [205] intent to violate the law. Intent may be proved by circumstantial evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eye-witness account of the

state of mind with which the acts were done or omitted. What a defendant does or fails to do may indicate intent or lack of intent to commit the offense charged. Intent may be inferred from all the evidence in the case, including any acts done and statements made by the accused. Determining the issue as to intent the jury are entitled to consider all the facts and circumstances in evidence.

In this particular case the defendant has been prosecuted by the Government's presentation of what is termed a net worth statement, or net worth expenditure basis. The method of establishing net taxable income sought to be applied in this case is effective only if the computations of net worth at the beginning and the end of the questioned periods can be reasonably accepted as accurate. You ladies and gentlemen heard the testimony of Mr. Tucker, who is the man that presented the net worth statement, and you know from that testimony just exactly what its sources were and what his figures were. It will be for you to consider that evidence and to determine in your own minds whether the statement is dependable, accurate and reliable; but I have instructed you that that method of [206] establishing net taxable income is effective only if the computation of net worth at the beginning and at the end of the questioned periods can reasonably be accepted as accurate.

In each count of the indictment in this case it is the Government's charge that the defendant Edward B. Calderon did willfully and knowingly attempt to defeat and evade a large part of the in-

come tax due and owing by him and his wife to the United States of America. In this connection it would not be a willful intent to evade taxes unless the tax returns involved in this case were filed or caused to be filed by the defendant with the deliberate intention and criminal purpose of evading lawful taxes. Evidence of incomplete books, inaccurate records, errors of omission or commission, negligence or laxity in the keeping of books, or the necessity of reaudit would not alone be sufficient to establish guilt. But such evidence is important to be considered in determining whether it supports or corroborates other evidence of a criminal intent to escape the tax.

As you have noted, a separate crime or offense, that is, a separate violation of the same statute, is charged in each count of the indictment. Each offense and the evidence applicable thereto should be considered separately, as though no other offense were charged. The fact that you may find the accused guilty or not guilty of one of the offenses charged should not influence your verdict with respect to any other [207] offense charged.

The verdict—that is, your verdict—must represent the considered judgment of each juror. In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous. It is your duty as jurors to consult with one another and to deliberate with the view of reaching agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after impartial

consideration of the evidence with your fellow jurors.

In the course of your deliberations do not hesitate to reexamine your own views and change your opinion if convinced that it is erroneous. But do not surrender your honest convictions as to the weight and effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case and that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use good sense. Consider the evidence for only those purposes for which it has been submitted and give it a reasonable and fair construction. If the accused be proved guilty, say so; if not proved guilty, say so. Remember at all times that the defendant is entitled to acquittal if any reasonable doubt [208] remains in your mind. Remember also that the question before you can never be will the Government win or lose the case. The Government always wins when justice is done, regardless of whether the verdict be guilty or not guilty.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the Bailiff. But bear in mind you are not to reveal to the Court or to any person how the jury stands numerically or otherwise on the question of the guilt or innocence of the accused until after you have reached a unanimous verdict.

Upon retiring to the Jury Room you will select one of your number to act as Foreman, and the Foreman when selected by you will preside over your deliberations and be your spokesman in Court. A form of verdict has been prepared for your convenience in the case and omitting the formal parts of it it reads as follows:

We, the Jury duly impaneled and sworn in the above entitled action, upon our oath do find the defendant Edward B. Calderon blank as charged in Count One, and blank as charged in Count Two, Count Three, Count Four. In the blank space if—and this is as to each particular count, in the space provided on each count—if under the evidence and under the instructions of the Court as I have given them to you you should find the defendant guilty of a particular count, then the word [209] guilty will be inserted. On the other hand, if under the evidence and under the instructions which I have given you you find the defendant not guilty of a particular count, then the words not guilty will be inserted in the blank space as to that count.

You will take this form to the Jury Room and when you have reached a unanimous agreement as to your verdict you will have the Foreman fill it in, date it, sign it, state your verdict upon which you agree, and then you will return with the verdict to the Court Room.

Do counsel have any exceptions or objections in the instructions?

Mr. Herring: No, your Honor.

Mr. Flynn: No.

The Court: Very well. Will you swear the Bailiff, please.

(Bailiff sworn.)

The Court: Ladies and gentlemen, you will now retire in charge of the Bailiff.

[Endorsed]: Filed Dec. 16, 1952.

[Endorsed]: No. 13675. United States Court of Appeals for the Ninth Circuit. Edward B. Calderon, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed: December 27, 1952.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States District Court for the
District of Arizona

[Title of Cause No. C-13083.]

**STIPULATION FOR PRESENTATION OF
ORIGINAL EXHIBITS ON APPEAL**

It is hereby stipulated, by and between the United States of America, through Frank Flynn, United States Attorney, by K. Berry Peterson, Deputy United States Attorney, and Richey & Herring, attorneys for the defendant appellant in the above matter, by Norman Herring, that all exhibits admitted in evidence, or offered in evidence and made a part of the Record on Appeal in this cause, may be considered by the Appellate Court in their original form without the necessity of reproduction in a formal Abstract of Record.

Dated this 24th day of December, 1952.

**UNITED STATES OF AMERICA,
FRANK FLYNN,**

United States Attorney for the Dis-
trict of Arizona,

/s/ By **K. BERRY PETERSON,**

Deputy United States Attorney

RICHEY & HERRING,

Attorneys for Defendant, Appellant

/s/ By **NORMAN HERRING**

[Endorsed]: Filed Dec. 31, 1952.

[Endorsed]: Received January 2, 1953. Paul P.
O'Brien, Clerk.

In the United States Court of Appeals
for the Ninth Circuit

No. 13675

EDWARD B. CALDERON, Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

DESIGNATION OF RECORD AND POINTS
ON WHICH APPELLANT INTENDS
TO RELY

Comes Now the Appellant, by his attorneys undersigned, and designates the following Record as Material on Appeal or Review:

1. The Indictment.
2. The Record of Arraignment and Defendant's Plea.
3. All exhibits marked and received in evidence at the trial.
4. The complete Reporter's Transcript of Testimony and Proceedings.
5. The Minute Entries, made during and after the beginning of the trial, to and including the filing of the Notice of Appeal herein.
6. The Judgment of the Court and the sentence imposed.
7. Notice of Appeal.
8. Clerk's Certificate.
9. This instrument.

Points Upon Which Appellant Will Rely
on Appeal

I.

In the trial of this case the Lower Court erroneously permitted, oral and written admissions of the defendant to be introduced in evidence without independent proof of the corpus delicti of the crime charged.

II.

The "Net Worth Statement", as prepared by the Internal Revenue Agents, was testified to and the figures therefrom were received in evidence, although it affirmatively appeared from the testimony of the government witnesses that the original asset figures were erroneous and not based on fact.

III.

The defendant's Motion to Dismiss, and for a Directed Verdict, at the close of the Government's Case, should have been granted because the evidence did not make out the corpus delicti of the offense and because the Government's Case was based on conjecture, guess, and supposition from which a "net worth statement" had been created. There was no evidence corroborating the purely circumstantial evidence of the corpus delicti.

IV.

The Motion of the defendant for dismissal of the case and for a directed verdict, at the close of all

the evidence, should have been granted because there was not sufficient evidence to present to the jury. The evidence did not disclose that a crime had been committed; the evidence did not prove that the specific crimes charged had been committed; the evidence did not prove that the defendant had committed any of the crimes charged. A conviction will not be sustained, based on circumstantial evidence alone, where such circumstantial evidence does not exclude every reasonable hypothesis of the innocence of the defendant.

V.

The Verdict and Judgment of Guilty is not sustained by competent evidence.

Respectfully submitted,

RICHEY & HERRING,

/s/ By **NORMAN HERRING,**

Attorneys for Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed January 8, 1953. Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

No. 13675

EDWARD B. CALDERON, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of
Arizona

PROCEEDINGS HAD IN THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

Excerpt from Proceedings of Wednesday, July 29, 1953

Before: DENMAN, *Chief Judge*, HEALY and BONE, *Circuit Judges*

ORDER OF SUBMISSION

Ordered appeal in the above entitled cause argued by Mr. Norman Herring, counsel for the appellant, and by Mr. John Lockley, Special Assistant to the Attorney General, counsel for the appellee, and submitted to the court for consideration and decision.

UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

Excerpt from Proceedings of Friday, October 9, 1953

Before: DENMAN, *Chief Judge*, HEALY and BONE, *Circuit Judges*

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING
OF JUDGMENT

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

EDWARD B. CALDERON, APPELLANT

v.s.

UNITED STATES OF AMERICA, APPELLEE

No. 13,675

October 9, 1953

Appeal from the United States District Court for the District
of ArizonaBefore DENMAN, *Chief Judge*, and HEALY and BONE, *Circuit Judges*.DENMAN, *Chief Judge*:

This is an appeal from a judgment of the United States District Court imposing fines and probation upon appellant upon conviction on four counts of income tax evasion.

The question here is whether admissions of Calderon were properly received in evidence absent any independent evidence of the crime of tax evasion.

Calderon operates a legitimate coin-machine business in Douglas, Arizona. He is charged with having failed to report all of the income from this business for the years 1946, 1947, 1948, 1949. The Government established the alleged excess income for these years by the "net worth" method, measuring the increase of net worth for each year. The items which went into a net worth statement prepared by the Government were stipulated to be correct with the exceptions of "Cash on Hand" and "Cash in the Bank."

The burden of proof is on the prosecution as to each pertinent starting item of the net worth statements to a reasonable certainty.¹ Absent such a starting item as, say, cash on hand the remainder of the statement proves nothing. Here there is no question as to the items "cash in bank" as to each of the four years. As to "cash on hand," that, at the start of the accounting period, must be low enough to combine with the other factors to show a greater income than reported.

Here the Government's computation rested on \$500 cash on hand

¹ *Bryan v. United States*, 175 F. 2d 223, 226 (Cir. 5); *United States v. Fenwick*, 177 F. 2d 488 (Cir. 7).

See also: *Guriepy v. United States*, 189 F. 2d 459, 463 (Cir. 6); *Brofella v. United States*, 184 F. 2d 823, 825 (Cir. 6).

at the beginning of 1946 and on that beginning amount the four years' charges of under reporting were made. At the trial a tax agent, a witness for the government, testified as follows:

"Q. Now, let's get back to this statement. You said, as I understand it, that if the cash on hand item as it appears in your net worth statement is in error then the whole thing is in error, that is right, isn't it?

A. It would affect it, yes. It wouldn't make any of the other items wrong or right.

Q. Just make the total wrong all the way through?

A. Yes, if the item was wrong.

Q. The total taxes, the total amounts Mr. Calderon is to be charged with would be wrong all the way through? It is true, isn't it?

A. Yes, sir.

Calderon contends there is no admissible evidence to show his charged understatements, since all the testimony concerning the cash on hand consisted of his extrajudicial admissions to the tax officials and to his tax consultant.

The Government claims that Calderon's sworn statement given the tax officials confessing the under-reporting of his income for the four years, which was introduced in evidence over the objection that the corpus delicti had not been shown, is not an extrajudicial admission. The contrary has been stated the law in *Pong Wing Quong v. United States*, 111 F. 2d 751 (Cir. 9); *Gulotta v. United States*, 113 F. 2d 683 (Cir. 8); *Yost v. United States*, 157 F. 2d 147 (Cir. 4).

Calderon took the stand and gave testimony of cash on hand on January 1, 1945, which conflicted with his testimony at an earlier trial. We agree with the Government's position that the jury rejected Calderon's testimony as a whole. Otherwise they would have had to acquit him on the charges for 1947 and 1948, since the lowest amount of cash on hand he stated made his returns for those years not understatements.

The only other evidence showing the charged understatements consists of Calderon's verbal statements to the tax officials and to his bookkeeper. *A fortiori* since such written statements are extrajudicial, these verbal statements are. They cannot be the basis of a conviction absent, as here, some independent proof of the corpus delicti. *Spriggs v. United States*, 198 F. 2d 782 (Cir. 9); *United States v. Chapman*, 168 F. 2d 997, 1001 (Cir. 7); cert. denied, 335 U. S. 853.

The judgment is reversed and a new trial ordered.

(Endorsed.) Opinion. Filed Oct. 9, 1953. Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

EDWARD B. CALDERON, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

No. 13675

JUDGMENT

Appeal from the United States District Court for the District of Arizona.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said District Court in this cause be, and hereby is reversed and a new trial ordered.

(Endorsed) Judgment

Filed and entered October 9, 1953, PAUL P. O'BRIEN, *Clerk*.

UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

Excerpt from Proceedings of Tuesday, December 8, 1953

Before: DENMAN, *Chief Judge*, HEALY and BONE, *Circuit Judges*.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof and by direction of the Court, It Is ORDERED that the petition of appellant, filed November 22, 1953, and within time allowed therefor by rule of court, and valid extension thereof, for a rehearing of above cause be, and hereby is, denied.

UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

EDWARD B. CALDERON, APPELLANT

v/s.

UNITED STATES OF AMERICA, APPELLEE

No. 13675

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED
RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and twenty-two (222) pages, numbered from and including 1 to and including 222, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Court of Appeals, made pursuant to request of the Solicitor General of the United States, counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the original thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 13th day of January, 1954.

[SEAL.]

(S.) PAUL P. O'BRIEN, *Clerk*.

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1953

No. —

UNITED STATES OF AMERICA, PETITIONER

VS.

EDWARD B. CALDERON

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 6th, 1954.

(S.) WM. O. DOUGLAS,

*Associate Justice of the Supreme Court
of the United States.*

Dated this 5th day of January, 1954.

Supreme Court of the United States

No. 577, October Term, 1953

UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD B. CALDERON

Order allowing certiorari

Filed June 7, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.